

Extra Ordinary Part - VI / 2004

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TUESDAY, JANUARY 13, 2004/PAUSA 23, 1925

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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/69/2003/Ord-403/E.- The Following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part-II, Section 1, dated the 27th October, 2003 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 27th October, 2003/Kartika 5, 1925 (Saka)

THE PREVENTION OF TERRORISM (AMENDMENT) ORDINANCE, 2003

NO. 4 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance to amend the Prevention of Terrorism Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Prevention of Terrorism (Amendment) Ordinance, 2003.

Short title and commencement.

(2) It shall come into force at once.

Amendment of
section 60.

2. In section 60 of the Prevention of Terrorism Act, 2002, after sub-section (3), the following sub-sections shall be inserted, namely:- 15 of 2002.

“(4) Without prejudice to the other provisions of this Act, any Review Committee constituted under sub-section (1) shall, on an application by any aggrieved person, review whether there is a *prima facie* case for proceeding against the accused under this Act and issue directions accordingly.

(5) Any direction issued under sub-section (4),-

(i) by the Review Committee constituted by the Central Government shall be binding on the Central Government, the State Government and the police officer investigating the offence; and

(ii) by the Review Committee constituted by the State Government shall be binding on the State Government and the police officer investigating the offence.

(6) Where the reviews under sub-section (4) relating to the same offence under this Act, have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State Government, under sub-section (1), any direction issued by the Review Committee constituted by the Central Government shall prevail.”.

Sd/-

A.P.J. ABDUL KALAM,
President.

Sd/-

T. K. VISWANATHAN,
Secy. to the Govt. of India

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/70/2003/Ord-503/E.- The Following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part-II, Section 1, dated the 29th October, 2003 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 29th October, 2003/Kartika 7, 1925 (Saka)

THE REPRESENTATION OF THE PEOPLE (AMENDMENT)
ORDINANCE, 2003

NO. 5 OF 2003

Promulgated by the President in the Fifty-fourth Year of
the Republic of India.

An Ordinance further to amend the Representation of the
People Act, 1950 and the Representation of the
People Act, 1951.

WHEREAS Parliament is not in session and the President is
satisfied that circumstances exist which render it necessary for him to
take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by
clause (1) of article 123 of the Constitution, the President is pleased
to promulgate the following Ordinance:-

CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the Representation of the People (Amendment) Ordinance, 2003. Short title and commencement.

(2) It shall come into force at once.

CHAPTER II

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

Amendment of section
13AA of Act 43 of
1950.

2. In section 13AA of the Representation of the People Act, 1950, in sub-section (1), the words "other than a Union territory," shall be omitted.

CHAPTER III

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

Amendment of Act 43
of 1951.

3. In the Representation of the People Act, 1951,-

(a) in section 26, sub-section (5) shall be omitted ;

(b) in section 78, sub-section (2) shall be omitted.

Sd/-

A.P.J. ABDUL KALAM,
President.

Sd/-

T. K. VISWANATHAN,
Secy. to the Govt. of India

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President
GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sacriyalaya, Gandhinagar, 13th January, 2004.

No. RPB/71/2003/Ord-603/E.- The Following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part-II, Section 1, dated the 31st October, 2003 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 31st October, 2003/Kartika 9, 1925 (Saka)

THE DELIMITATION (AMENDMENT) ORDINANCE, 2003

No. 6 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance to amend the Delimitation Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Delimitation (Amendment) Ordinance, 2003.

Short title
and
commencement.

(2) It shall come into force at once.

33 of 2002.

2. In section 3 of the Delimitation Act, 2002 (hereinafter referred to as the principal Act), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Amendment
of section 3.

“*Explanation*.— For the purposes of clause (c), the State Election Commissioner of concerned State,—

(i) in respect of the duties of the Commission relating to a State (other than the States of Meghalaya, Mizoram and Nagaland), means the State Election Commissioner appointed by the Governor of that State under clause (1) of article 243K; and

(ii) in respect of the duties of the Commission relating to the State of Meghalaya or the State of Mizoram or the State of Nagaland, as the case may be, means a person nominated by the Governor of that State for such purposes."

Amendment
of section 4.

3. In section 4 of the principal Act, in sub-section (2), for the figures "1991", the figures "2001" shall be substituted.

Amendment
of section 8.

4. In section 8 of the principal Act,—

(i) in clause (a), for the figures "1991", the figures "2001" shall be substituted;

(ii) in clause (b), for the figures "1991", the figures "2001" shall be substituted.

Amendment
of section 9.

5. In section 9 of the principal Act, in sub-section (1), for the figures "1991", the figures "2001" shall be substituted.

Sd/-

A.P.J. ABDUL KALAM,
President.

Sd/-

T. K. VISWANATHAN,
Secy. to the Govt. of India

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/72/2003/Ord-703/E :- The Following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part-II, Section 1, dated the 5th November, 2003 is republished for general information :-

GOVERNMENT OF INDIA,
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 5th November, 2003/Kartika 14, 1925 (Saka)

THE INDIAN TELEGRAPH (AMENDMENT) ORDINANCE, 2003

NO. 7 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance further to amend the Indian Telegraph Act, 1885.

WHEREAS the Indian Telegraph (Amendment) Bill, 2003 was introduced in the House of the People, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: -

1. (1) This Ordinance may be called the Indian Telegraph (Amendment) Ordinance, 2003.

Short title and
commencement.

(2) It shall be deemed to have come into force on the 1st day of April, 2002.

Amendment of
section 3.

2. In section 3 of the Indian Telegraph Act, 1885 (hereinafter referred to as the principal Act), clause (I) shall be renumbered as clause (IAA) and before clause (IAA) as so renumbered, the following clauses shall be inserted, namely:-

“(i) “Fund” means the Universal Service Obligation Fund established under sub-section (I) of section 9A;

(IA) “Universal Service Obligation” means the obligation to provide access to basic telegraph services to people in the rural and remote areas at affordable and reasonable prices;”

Amendment of
section 4.

3. In section 4 of the principal Act, in sub-section (I), the following Explanation shall be inserted at the end, namely:-

“Explanation.-The payments made for the grant of a license under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendation made in this behalf by the Telecom Regulatory Authority of India established under sub-section (I) of section 3 of the Telecom Regulatory Authority of India Act, 1997.”

24 of 1997.

Amendment of
section 7.

4. In section 7 of the principal Act, in sub-section (2), after clause (ee), the following clauses shall be inserted, namely:-

“(eea) the manner in which the Fund may be administered;

(eeb) the criteria based on which sums may be released.”

Insertion of
new Part IIA.

5. After Part II of the principal Act, the following Part shall be inserted, namely:-

“PART IIA UNIVERSAL SERVICE OBLIGATION FUND

Establishment
of Universal
Service
Obligation
Fund.

9A. (1) On and from the commencement of the Indian Telegraph (Amendment) Ordinance, 2003, there shall be deemed to have been established, for the purposes of this Act, a Fund to be called the Universal Service Obligation Fund.

(2) The Fund shall be under the control of the Central Government and there shall be credited thereto-

(a) any sums of money paid under section 9B;

(b) any grants and loans made by the Central Government under section 9C.

1 to 9A

(3) The balance to the credit of the Fund shall not lapse at the end of the financial year.

Crediting of
sum to
Consolidated
Fund of India.

9B. The sums of money received towards the Universal Service Obligation under section 4 shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceeds to the Fund from time to time for being utilised exclusively for meeting the Universal Service Obligation.

9C. The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants and loans such sums of money as that Government may consider necessary in the Fund.

Grants and loans
by the Central
Government.

9D. (1) The Central Government shall have the power to administer the Fund in such manner as may be prescribed by rules made under this Act.

Administration
and utilisation of
Fund.

(2) The Fund shall be utilised exclusively for meeting the Universal Service Obligation.

(3) The Central Government shall be responsible for the co-ordination and ensuring timely utilisation and release of sums in accordance with the criteria as may be prescribed by rules made under this Act."

Sd/-

A.P.J. ABDUL KALAM,
President.

Sd/-

T. K. VISWANATHAN,
Secy. to the Govt. of India

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/73/2003/Ord-803/E :- The Following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part-II, Section 1, dated the 7th November, 2003 is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 7th November, 2003/Kartika 16, 1925 (Saka)

THE INDIAN MEDICINE CENTRAL COUNCIL (AMENDMENT) ORDINANCE, 2003

No. 8 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance further to amend the Indian Medicine Central Council Act, 1970.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: -

1. (1) This Ordinance may be called the Indian Medicine Central Council (Amendment) Ordinance, 2003.

Short title and commencement.

(2) It shall come into force at once.

48 of 1970.

2. In the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the principal Act), in section 2, after clause (e), the following clause shall be inserted, namely:-

Amendment of section 2.

“(ea) “medical college” means a college of Indian medicine, whether known as such or by any other name, in which a person may undergo a course of study or training including any post-graduate course of study or training which will qualify him for the award of a recognized medical qualification;”.

Substitution of
new Chapter for
Chapter II A.

3. For Chapter II A of the principal Act, the following Chapter shall be substituted, namely:-

'CHAPTER II A

PERMISSION FOR NEW MEDICAL COLLEGE, COURSE, ETC.

Permission for
establishment of
new medical
college, new
course of study,
etc.

13A. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, -

(a) no person shall establish a medical college; or

(b) no medical college shall -

(i) open a new or higher course of study or training, including a post-graduate course of study or training, which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training including a post-graduate course of study or training,

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1. - For the purposes of this section, "person" includes any University or a trust, but does not include the Central Government.

Explanation 2. - For the purposes of this section, "admission capacity", in relation to any course of study or training, including post-graduate course of study or training, in a medical college, means the maximum number of students as may be fixed by the Central Government from time to time for being admitted to such course or training.

(2) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall refer the scheme to the Central Council for its recommendations.

(3) The scheme referred to in sub-section (2), shall be in such form and contain such particulars and be preferred in such manner and accompanied with such fee, as may be prescribed.

(4) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may, -

(a) if the scheme is defective and does not contain necessary particulars, give a reasonable opportunity to the person or medical college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Central Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (8) and submit it to the Central Government together with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(5) The Central Government may, after considering the scheme and recommendation of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical college concerned and having regard to the factors referred to in sub-section (8), either approve the scheme

with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2).

(6) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order is communicated by the Central Government to the person or medical college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(7) In computing the time-limit specified in sub-section (6), the time taken by the person or medical college concerned submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded.

(8) The Central Council while making its recommendations under clause (b) of sub-section (4) and the Central Government while passing an order, either approving or disapproving the scheme under sub-section (5), shall have due regard to the following factors, namely: —

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under section 22;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or the course of study or training by persons having recognised medical qualifications;

(f) the requirement of manpower in the field of practice of Indian medicine in the medical college;

(g) any other factors as may be prescribed.

(9) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical college concerned.

Non-recognition
of medical
qualifications in
certain cases.

13B. (1) Where any medical college is established without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training including a post-graduate course of study or training without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college on the basis of such study or training shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall not be deemed to be a recognised medical qualification for the purposes of this Act.

Time for seeking
permission for
certain existing
medical colleges.

13C. (1) If any person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity on or before the commencement of the Indian Medicine Central Council (Amendment) Ordinance, 2003, such person or medical college, as the case may be, shall seek, within a period of three years from the said commencement, permission of the Central Government in accordance with the provisions of section 13A.

(2) If any person or medical college, as the case may be, fails to seek permission under sub-section (1), the provisions of section 13B shall apply, so far as may be, as if, permission of the Central Government under section 13A has been refused.

Sd/-

A.P.J. ABDUL KALAM,
President.

Sd/-

T. K. VISWANATHAN,
Secy. to the Govt. of India

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/75/2003/Const.-89/E :- The Following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 30th September, 2003/Asvina 8, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 28th September, 2003 and is hereby published for general information:-

THE CONSTITUTION (EIGHTY-NINTH AMENDMENT) ACT, 2003

An Act

(28th September, 2003)

further to amend the Constitution of India.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Eighty-ninth Amendment) Act, 2003. Short title and commencement.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 338 of the Constitution,—

(a) for the marginal heading, the following marginal heading shall be substituted, namely:—

“National Commission for Scheduled Castes.”;

(b) for clauses (1) and (2), the following clauses shall be substituted, namely:—

“(1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes. . .

Amendment of article 338.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.”;

(c) in clauses (5), (9) and (10), the words “and Scheduled Tribes”, wherever they occur, shall be omitted.

Insertion of
new article
338A.

National
Commission
for Scheduled
Tribes.

3. After article 338 of the Constitution, the following article shall be inserted, namely:—

“338A. (1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the

Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.”

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar



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The Gujarat Government Gazette EXTRAORDINARY

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TUESDAY, JANUARY 13, 2004/PAUSA 23, 1925

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

**Acts of Parliament and Ordinances Promulgated by the President
GOVERNMENT OF GUJARAT**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/76/2003/Const-90/E :- The following Act of Parliament received the assent of the President on the 1st June, 2003 and is hereby published for general information:-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 30th September, 2003/Asvina 8, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 28th September, 2003 and is hereby published for general information:-

THE CONSTITUTION (NINETIETH AMENDMENT) ACT, 2003

An Act

(28th September, 2003)

further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Ninetieth Amendment) Act, 2003. Short title.

Amendment
of article 332.

2. In article 332 of the Constitution, in clause (6), the following proviso shall be inserted, namely:—

“Provided that for elections to the Legislative Assembly of the State of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, so notified, and existing prior to the constitution of the Bodoland Territorial Areas District, shall be maintained.”.

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/77/2003/Act-4303/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 8th September, 2003/Bhadra 17, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 7th September, 2003 and is hereby published for general information:-

THE AIRPORTS AUTHORITY OF INDIA (AMENDMENT) ACT, 2003

An Act.

(ACT No. 43 of 2003)

(7th September, 2003)

further to amend the Airports Authority of India Act, 1994.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Airports Authority of India (Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

55 of 1994.

2. In the Airports Authority of India Act, 1994 (hereinafter referred to as the principal Act), in the long title, after the words "aeronautical communication stations", the words "for the purposes of establishing or assisting in the establishment of airports" shall be inserted.

Amendment of long title.

3. In section 1 of the principal Act, in sub-section (3), after clause (a), the following clause shall be inserted, namely:—

Amendment of section 1.

"(aa) all private airports insofar as it relates to providing air traffic service, to issue directions under section 37 to them and for the purposes of Chapter VA;"

4. In section 2 of the principal Act, after clause (n), the following clause shall be inserted, namely:—

Amendment of section 2

'(nn) "private airport" means an airport owned, developed or managed by—

(i) any person or agency other than the Authority or any State Government, or

(ii) any person or agency jointly with the Authority or any State Government or both where the share of such person or agency, as the case may be, in the assets of the private airport is more than fifty per cent.;

Amendment
of section 12.

5. In section 12 of the principal Act, in sub-section (3), after clause (a), the following clause shall be inserted, namely:—

"(aa) establish airports, or assist in the establishment of private airports, by rendering such technical, financial or other assistance which the Central Government may consider necessary for such purpose;"

Insertion of
new
section 12A.
Lease by the
Authority.

6. In Chapter III of the principal Act, after section 12, the following section shall be inserted, namely:—

"12A. (1) Notwithstanding anything contained in this Act, the Authority may, in the public interest or in the interest of better management of airports, make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 as the Authority may deem fit:

Provided that such lease shall not affect the functions of the Authority under section 12 which relates to air traffic service or watch and ward at airports and civil enclaves.

(2) No lease under sub-section (1) shall be made without the previous approval of the Central Government.

(3) Any money, payable by the lessee in terms of the lease made under sub-section (1), shall form part of the fund of the Authority and shall be credited thereto as if such money is the receipt of the Authority for all purposes of section 24.

(4) The lessee, who has been assigned any function of the Authority under sub-section (1), shall have all the powers of the Authority necessary for the performance of such function in terms of the lease."

Insertion of
new section
22A.
Power of
Authority to
levy
development
fees at
airports.

7. After section 22 of the principal Act, the following section shall be inserted, namely:—

"22A. The Authority may, after the previous approval of the Central Government in this behalf, levy on, and collect from, the embarking passengers at an airport, the development fees at the rate as may be prescribed and such fees shall be credited to the Authority and shall be regulated and utilised in the prescribed manner, for the purposes of—

(a) funding or financing the costs of upgradation, expansion or development of the airport at which the fee is collected; or

(b) establishment or development of a new airport in lieu of the airport referred to in clause (a); or

(c) investment in the equity in respect of shares to be subscribed by the Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities."

Insertion of
new Chapter
VA.

8. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

CHAPTER VA

EVICTION OF UNAUTHORISED OCCUPANTS, ETC., OF AIRPORT PREMISES

28A. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "airport premises" means any premises—

(i) belonging to airport;

(ii) taken on lease for the purposes of airport;

(iii) acquired for the Authority under the provisions of the Land Acquisition Act, 1894 or any other corresponding law for the time being in force.

1 of 1894.

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause, "airport" includes private airport;

(b) "eviction officer" means an officer of the Authority appointed as such by it under section 28B;

(c) "premises" means any land or building or part of a building, and includes—

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building; and

(ii) any fittings affixed to such building or part of a building for more beneficial enjoyment thereof;

(d) "rent", in relation to any airport premises, means the consideration payable periodically for the authorised occupation of the premises, and includes—

(i) any charge for electricity, water or any other service in connection with the occupation of the premises; and

(ii) any tax, by whatever name called, payable in respect of the premises;

(e) "Tribunal" means the Airport Appellate Tribunal established under sub-section (1) of section 28-I;

(f) "unauthorised occupation", in relation to any airport premises, means the occupation by any person of the airport premises without authority for such occupation and includes the continuance in occupation by any person of the airport premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

28B. The Authority may, by general or special order in writing, appoint such number of its officers, as it thinks fit, to be eviction officers for the purposes of this Chapter, and define the local limits within which, or the categories of airport premises in respect of which, the eviction officers shall exercise the powers conferred and perform the duties imposed, on eviction officers by or under this Chapter.

Appointment of eviction officers.

28C. (1) If the eviction officer is of the opinion that any persons are in unauthorised occupation of any airport premises and that they should be evicted, the eviction officer shall, in the manner hereinafter provided, issue a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

Issue of notice to show cause against order of eviction.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in, the airport premises—

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof, and

(ii) to appear before the eviction officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown and also for personal hearing, if such hearing is desired.

(3) The eviction officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the airport premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to the persons concerned.

(4) Where the eviction officer knows or has reasons to believe that any person is in occupation of the airport premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

28D. (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 28C and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 28C, the eviction officer is satisfied that the airport premises are in unauthorised occupation, the eviction officer may make an order of eviction, for reasons to be recorded therein, directing that the airport premises shall be vacated, on such date as may be specified in the order, by the persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the airport premises.

(2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the order or within fifteen days of the date of publication under sub-section (1), whichever is earlier, the eviction officer or any other officer duly authorised by the eviction officer in this behalf may, after the date so specified or after the expiry of the period aforesaid, whichever is earlier, evict that person from, and take possession of, the airport premises and may, for that purpose, use such force as may be necessary.

28E. (1) Where any persons have been evicted from any airport premises under section 28D, the eviction officer may, after giving ten days' notice to the persons from whom possession of the airport premises has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the Central Government or the corporate authority on account of arrears of rent or damages or costs, be paid to such person or persons as may appear to the eviction officer to be entitled to the same:

Provided that where the eviction officer is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.

28F. (1) No person shall—

(a) erect or place or raise any building or any movable or immovable structure or fixture;

(b) display or spread any goods;

(c) bring or keep any cattle or other animal,

on or against or in front of any airport premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such airport premises.

Eviction of
authorised
occupants.

Disposal of
property left
on airport pre-
mises by
authorised
occupants.

Power to
remove
unauthorised
structures,
etc.

(2) Where any building or other immovable structure or fixture has been erected, placed or raised in any airport premises in contravention of the provisions of sub-section (1), the eviction officer may serve on the person erecting such building or other structure or fixture, a notice requiring him either to remove or show cause why he shall not remove such building or other structure or fixture to or from the airport premises within such period, not being less than seven days but not exceeding thirty days as may be specified in the notice, and on the omission or refusal of such person to show cause, or to remove such building or other structure or fixture from the airport premises, or where the cause shown is not, in the opinion of the eviction officer, sufficient, the eviction officer may, by order, remove or cause to be removed the building or other structure or fixture from the airport premises and the cost of such removal shall be recoverable from such person as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised; or any goods have been displayed or spread or any cattle or other animal has been brought or kept on any airport premises in contravention of the provisions of sub-section (1) by any person, the eviction officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the airport premises and the cost of such removal shall be recoverable from such person as an arrear of land revenue.

28G. (1) Where any person is in arrears of rent payable in respect of airport premises, the eviction officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

Power to require payment of rent or damages in respect of airport premises.

(2) Where any person is, or has at any time been, in unauthorised occupation of any airport premises, the eviction officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) While making an order under sub-section (1) or sub-section (2), the eviction officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed.

(4) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such period not being less than seven days but not exceeding thirty days as may be specified in the notice as to why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same have been considered by the eviction officer.

28H. An eviction officer shall, for the purpose of holding any inquiry into this Chapter, have the same powers, as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Powers of eviction officers.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) any other matter which may be prescribed.

28-I. (1) The Central Government shall, by notification in the Official Gazette, establish a Tribunal, to be known as the Airport Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Establishment of Tribunal.

(2) The Tribunal shall consist of a Chairperson (hereinafter referred to in this Act, as the Chairperson of the Tribunal).

(3) The head office of the Tribunal shall be at New Delhi:

Provided that the Tribunal may hold its sittings at other places as the Chairperson of the Tribunal may decide, from time to time, having taken into consideration the convenience to decide the appeals before the Tribunal.

(4) The Chairperson of the Tribunal shall be appointed by the Central Government after consultation with the Chief Justice of India.

(5) A person shall not be qualified for appointment as Chairperson of the Tribunal unless he is, or has been, or is qualified to be, a Judge of a High Court.

(6) The Chairperson of the Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

(7) The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson of the Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor other terms and conditions of service of the Chairperson of the Tribunal shall be varied to his disadvantage after his appointment.

Resignation
and removal.

28J. (1) The Chairperson of the Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson of the Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson of the Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson had been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson of the Tribunal.

Appeals to
Tribunal.

28K. (1) Any person aggrieved by an order of the eviction officer under this Chapter may, within fifteen days from the date of such order, prefer an appeal to the Tribunal in such form as may be prescribed:

Provided that the Tribunal may entertain any appeal after the expiry of the said period of fifteen days, but not after the period of thirty days from the date aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Tribunal shall, after giving the appellant and the eviction officer an opportunity of being heard, pass such order as it thinks fit.

(3) The Tribunal shall dispose of the appeal within thirty days from the date of filing the appeal:

Provided that the Tribunal may, for reasons to be recorded in writing, dispose of the appeal within a further period of fifteen days.

(4) An order of the Tribunal passed under sub-section (2) shall be executable as a decree of a civil court and for executing the same the Tribunal shall send a copy thereof to the civil court having jurisdiction which shall execute the same, as expeditiously as may be possible, as if such order is a decree passed by that court.

(5) On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Chapter by the Tribunal in relation to any matter, no court (except the Supreme Court under article 136 and the High Court under articles 226 and 227 of the Constitution) shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such matter.

5 of 1908.

28L. (1) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to lay down and regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

Procedure
and powers of
Tribunal.

5 of 1908.

(2) The Tribunal shall have, for the purpose of discharging its functions under this Chapter, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) any other matter which may be prescribed.

45 of 1860.
2 of 1974.

(3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

28M. Subject to the provisions of this Act, every order made by an eviction officer or the Tribunal under this Chapter shall be final and shall not be called in question in any suit, application, execution or other proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Chapter.

Finality of
orders.

28N. (1) Whoever, unlawfully occupies any airport premises, shall be punishable with imprisonment for a term which may extend to six years and with fine.

Offences
under this
Chapter.

(2) Whoever fails to comply with any order of the eviction officer or the Tribunal under this Chapter shall be punishable with imprisonment for a term which may extend to seven years and with fine.

(3) If any person who has been evicted from any airport premises under this Chapter again occupies the premises without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to ten years and with fine.

(4) The court may, while convicting a person under sub-section (3), make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken under this Chapter.

28-O. (1) Where any offence under this Chapter has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by
companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Chapter, if he proves that the offence was committed without his knowledge or he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence

has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Cognizance
of offences.

28P. No court shall take cognizance of any offence under this Chapter except on a complaint made by the Authority, eviction officer or any other officer authorised by it and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Chapter.

Power to
obtain
information.

28Q. If the eviction officer has reason to believe that any persons are in an unauthorised occupation of any airport premises, he or any other officer authorised by him in this behalf may require those persons or any other person to furnish information in relation to the names and other particulars of the persons in occupation of the airport premises and every person so required shall be bound to furnish the information in his possession.

Officers, etc.,
to aid and
assist.

28R. It shall be the duty of all the officers of the Government including police officers and any local authority to aid and assist the eviction officer or other officers of the Authority in the discharge of their functions under this Chapter.

Amendment
of section 33.

9. In section 33 of the principal Act, after the words “other employee of the Authority”, the words “or the Chairperson of the Tribunal” shall be inserted.

Amendment
of section 41.

10. In section 41 of the principal Act, in sub-section (2),—

(a) after clause (e), the following clause shall be inserted, namely:—

“(ee) the rate of development fees and the manner of regulating and utilising the fees under section 22A;”;

(b) after clause (g), the following clauses shall be inserted, namely:—

“(gi) the other manner of serving notice under sub-section (3) of section 28C;

“(gii) the other manner of serving notice under sub-section (4) of section 28C;

“(giii) the principles of assessment of damages under sub-section (2) of section 28G;

“(giv) the rate of simple interest under sub-section (3) of section 28G;

“(gv) any other matter under clause (c) of section 28H;

“(gvi) the salaries and allowances payable to, and other terms and conditions of service of, the Chairperson of the Tribunal under sub-section (7) of section 28-I;

“(gvii) the procedure for the investigation of misbehaviour or incapacity of the Chairperson of the Tribunal under sub-section (3) of section 28J;

“(gviii) the form of appeal under sub-section (1) of section 28K;

“(gix) any other matter under clause (c) of sub-section (2) of section 28L;”.

Power to
remove
difficulties.

11. (1) If any difficulty arises in giving effect to the provisions of the principal Act as amended by this Act, the Central Government may, by order published in the Official Gazette, make such provisions; not inconsistent with the provisions of the principal Act as amended by this Act, as appears to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/78/2003/Act-4403/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA.

MINISTRY OF LAW, JUSTICE AND JUSTICE.

(Legislative Department),

New Delhi, the 8th September, 2003/Bhadra 17, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 7th September, 2003 and is hereby published for general information:-

THE ELECTION AND OTHER RELATED LAWS (AMENDMENT) ACT, 2003

An Act

(ACT No. 44 of 2003)

(7th September, 2003)

further to amend the Representation of the People Act, 1951, the Companies Act, 1956 and the Income-tax Act, 1961.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Election and Other Related Laws (Amendment) Act, 2003. Short title

CHAPTER II

AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

43 of 1951.

2. After section 29A of the Representation of the People Act, 1951 (hereafter in this Chapter referred to as the principal Act), the following sections shall be inserted, namely:—

1 of 1956.

'29B. Subject to the provisions of the Companies Act, 1956, every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Insertion of new sections 29B and 29C

Political parties entitled to accept contribution

49 of 1976.

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (c) of section 2 of the Foreign Contribution (Regulation) Act, 1976.

Explanation.—For the purposes of this section and section 29C,—

(a) "company" means a company as defined in section 3;

(b) "Government company" means a company within the meaning of section 617; and

(c) "contribution" has the meaning assigned to it under section 293A, of the Companies Act, 1956 and includes any donation or subscription offered by any person to a political party; and

(d) "person" has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961, but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

29C. (1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 to the Election Commission.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3), then, notwithstanding anything contained in the Income-tax Act, 1961, such political party shall not be entitled to any tax relief under that Act.

3. After section 39 of the principal Act, the following section shall be inserted, namely:—

'39A. (1) Notwithstanding anything contained in any other law for the time being in force, the Election Commission shall, on the basis of the past performance of a recognised political party, during elections, allocate equitable sharing of time on the cable television network and other electronic media in such manner as may be prescribed to display or propagate any election matter or to address public in connection with an election.

(2) The allocation of equitable sharing of time under sub-section (1), in respect of an election, shall be made after the publication of list of contesting candidates under section 38 for the election and shall be valid till forty-eight hours before the hour fixed for poll for such election.

(3) The allocation of equitable sharing of time under sub-section (1) shall be binding on all political parties concerned.

(4) The Election Commission may, for the purposes of this section, make code of conduct for cable operators and electronic media and the cable operators and every person managing or responsible for the management of the electronic media shall abide by such code of conduct.

Declaration of donation received by the political parties.

Insertion of new section 39A.

Allocation of equitable sharing of time.

1 of 1956.

43 of 1961.

43 of 1961.

43 of 1961.

Explanation.—For the purposes of this section,—

(a) "electronic media" includes radio and any other broadcasting media notified by the Central Government in the Official Gazette;

(b) "cable television network" and "cable operator" have the meanings respectively assigned to them under the Cable Television Networks (Regulation) Act, 1995.

7 of 1995.

4. In section 77 of the principal Act, in sub-section (1), for *Explanations 1 and 3*, the following *Explanations* shall be substituted, namely:— Amendment of section 77.

'Explanation 1.—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section;

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.—For the purposes of clause (a) of *Explanation 1*, the expression "leaders of a political party", in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act :

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

5. After Part V of the principal Act, the following Part shall be inserted, namely:—

Insertion of new Part VA.

PART VA

FREE SUPPLY OF CERTAIN MATERIAL TO CANDIDATES OF
RECOGNISED POLITICAL PARTIES

Free supply of
copies of elec-
toral rolls.

78A. (1) The Government shall, at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State, supply, free of cost, to the candidates of recognised political parties such number of copies of the electoral roll, as finally published under the Representation of the People Act, 1950 and such other material as may be prescribed.

43 of 1950.

(2) The material referred to in sub-section (1) shall be supplied,—

(i) subject to such conditions as may be imposed by the Central Government in consultation with the Election Commission with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77; and

(ii) through such officers as may be specified by the Election Commission who shall act in accordance with such general or special directions as may be given by the Election Commission.

Supply of cer-
tain items to
candidates, etc.

78B. (1) The Election Commission shall, at any time between the date of publication of the notification calling the election for the purposes of constituting the House of the People or the Legislative Assembly of a State and the date on which the poll is to be taken, supply or cause to be supplied, such items as the Central Government may, by order, determine in consultation with the Election Commission, to the electors in the constituencies concerned or to the candidates set up by the recognised political parties.

(2) Where the Election Commission supplies the items to the candidates under sub-section (1), the Central Government may, in consultation with the Election Commission, impose conditions with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77.

Explanation.—For the purposes of section 39A, this Chapter and clause (hh) of sub-section (2) of section 169, the expression "recognised political party", has the meaning assigned to it in the Election Symbols (Reservation and Allotment) Order, 1968.

Amendment of
section 169.

6. In section 169 of the principal Act, in sub-section (2),—

(i) after clause (aa), the following clause shall be inserted, namely:—

"(aaa) the form of contribution report;";

(ii) after clause (b), the following clause shall be inserted, namely:—

"(bb) the manner of allocation of equitable sharing of time on the cable television network and other electronic media;";

(iii) after clause (h), the following clause shall be inserted, namely:—

"(hh) the material to be supplied by the Government to the candidates of recognised political parties at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State;";

CHAPTER III

AMENDMENT OF THE COMPANIES ACT, 1956

7. In section 293A of the Companies Act, 1956, after sub-section (5), the following *Explanation* shall be inserted, namely:—

Amendment of section 293A of Act 1 of 1956.

*'Explanation:—*For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.*'*

43 of 1951.

CHAPTER IV

AMENDMENTS OF THE INCOME-TAX ACT, 1961

8. In section 13A of the Income-tax Act, 1961 (hereafter in this Chapter referred to as the Income-tax Act),—

Amendment of section 13A.

(i) in the proviso, in clause (b), for the words "ten thousand rupees", the words "twenty thousand rupees" shall be substituted;

(ii) after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

"Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 for a financial year, no exemption under this section shall be available for that political party for such financial year."

43 of 1951.

(iii) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

*'Explanation.—*For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.*'*

43 of 1951.

9. In section 80A of the Income-tax Act, in sub-section (3), for the word; figures and letters "section 80GGA", the words, figures and letters "section 80GGA or section 80GGC" shall be substituted.

Amendment of section 80A.

10. After section 80GGA of the Income-tax Act, the following sections shall be inserted, namely:—

Insertion of new sections 80GGB and 80GGC.

'80GGB. In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any political party.

Deduction in respect of contributions given by companies to political parties.

*Explanation.—*For the removal of doubts, it is hereby declared that for the purposes of this section, the word "contribute", with its grammatical variation, has the meaning assigned to it under section 293A of the Companies Act, 1956.

1 of 1956.

80GGC. In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party.

Deduction in respect of contributions given by any person to political parties.

*Explanation.—*For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.*'*

43 of 1951.

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/79/2003/Act-4503/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 12th September, 2003/Bhadra 21, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 11th September, 2003 and is hereby published for general information:-

THE CENTRAL VIGILANCE COMMISSION ACT, 2003

An Act

(ACT No. 45 of 2003)

(11th September, 2003)

to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Central Vigilance Commission Act, 2003.

Short title.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Central Vigilance Commissioner" means the Central Vigilance Commissioner appointed under sub-section (1) of section 4;

(b) "Commission" means the Central Vigilance Commission constituted under sub-section (1) of section 3;

(c) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946;

25 of 1946.

(d) "Government company" means a Government company within the meaning of the Companies Act, 1956;

1 of 1956.

(e) "prescribed" means prescribed by rules made under this Act;

(f) "Vigilance Commissioner" means a Vigilance Commissioner appointed under sub-section (1) of section 4.

CHAPTER II
THE CENTRAL VIGILANCE COMMISSION

Constitution of
Central
Vigilance
Commission.

3. (1) There shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Act and the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Ordinance, 1999 which ceased to operate, and continued under the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD. III, dated the 4th April, 1999 as amended *vide* Resolution of even number, dated the 13th August, 2002 shall be deemed to be the Commission constituted under this Act.

Ord. 4 of
1999.

(2) The Commission shall consist of—

- | | | |
|---|---|--------------|
| (a) a Central Vigilance Commissioner | — | Chairperson; |
| (b) not more than two Vigilance Commissioners | — | Members. |

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

(a) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; or

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (a) or clause (b):

(4) The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(5) The Central Vigilance Commissioner, the other Vigilance Commissioners and the Secretary to the Commission appointed under the Central Vigilance Commission Ordinance, 1999 or the Resolution of the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD. III, dated the 4th April, 1999 as amended *vide* Resolution of even number, dated the 13th August, 2002 shall be deemed to have been appointed under this Act on the same terms and conditions including the term of office subject to which they were so appointed under the said Ordinance or the Resolution, as the case may be.

Ord. 4 of
1999.

Explanation.—For the purposes of this sub-section, the expression “term of office” shall be construed as the term of office with effect from the date the Central Vigilance Commissioner or any Vigilance Commissioner has entered upon his office and continued as such under this Act.

(6) The headquarters of the Commission shall be at New Delhi.

Appointment
of Central
Vigilance
Commissioner
and Vigilance
Commissioners.

4. (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

- | | | |
|---|---|--------------|
| (a) the Prime Minister | — | Chairperson; |
| (b) the Minister of Home Affairs | — | Member; |
| (c) the Leader of the Opposition in the House of the People | — | Member. |

Explanation.—For the purposes of this sub-section, “the Leader of the Opposition in the House of the People” shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the House of the People.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

5. (1) Subject to the provisions of sub-sections (3) and (4), the Central Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier. The Central Vigilance Commissioner, on ceasing to hold the office, shall be ineligible for reappointment in the Commission.

Terms and other conditions of service of Central Vigilance Commissioner.

(2) Subject to the provisions of sub-sections (3) and (4), every Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier:

Provided that every Vigilance Commissioner, on ceasing to hold the office, shall be eligible for appointment as the Central Vigilance Commissioner in the manner specified in sub-section (1) of section 4:

Provided further that the term of the Vigilance Commissioner, if appointed as the Central Vigilance Commissioner, shall not be more than four years in aggregate as the Vigilance Commissioner and the Central Vigilance Commissioner.

(3) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some other person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in Schedule to this Act.

(4) The Central Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the President, resign his office.

(5) The Central Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.

(6) On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

(a) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(b) further employment to any office of profit under the Government of India or the Government of a State.

(7) The salary and allowances payable to and the other conditions of service of—

(a) the Central Vigilance Commissioner shall be the same as those of the Chairman of the Union Public Service Commission;

(b) the Vigilance Commissioner shall be the same as those of a Member of the Union Public Service Commission:

Provided that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Central Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of retirement benefits in respect of any previous service rendered in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government, his salary in respect of the service as the Central Vigilance Commissioner or, as the case may be, the Vigilance Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salary, allowances and pension payable to, and the other conditions of service of, the Central Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

6. (1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

Removal of Central Vigilance Commissioner and Vigilance Commissioner.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in-office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

(4) If the Central Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

Power to make rules by Central Government for staff.

7. The Central Government may, in consultation with the Commission, make rules with respect to the number of members of the staff of the Commission and their conditions of service.

CHAPTER III

FUNCTIONS AND POWERS OF THE CENTRAL VIGILANCE COMMISSION

Functions and powers of Central Vigilance Commission.

8. (1) The functions and powers of the Commission shall be to—

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

49 of 1988.
2 of 1974.

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946;

25 of 1946.

Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

49 of 1988.
2 of 1974.

(d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

49 of 1988.
2 of 1974.

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or the public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

49 of 1988.
2 of 1974.

49 of 1988.

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988;

(g) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government;

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters;

(2) The persons referred to in clause (d) of sub-section (1) are as follows:—

(a) members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government;

(b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf;

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1).

9. (1) The proceedings of the Commission shall be conducted at its headquarters.

Proceedings of
Commission.

(2) The Commission may, by unanimous decision, regulate the procedure for transaction of its business as also allocation of its business amongst the Central Vigilance Commissioner and other Vigilance Commissioners.

(3) Save as provided in sub-section (2), all business of the Commission shall, as far as possible, be transacted unanimously.

(4) Subject to the provisions of sub-section (3), if the Central Vigilance Commissioner and other Vigilance Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

(5) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the senior-most Vigilance Commissioner present at the meeting, shall preside at the meeting.

(6) No act or proceeding of the Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

10. (1) In the event of the occurrence of any vacancy in the office of the Central Vigilance Commissioner by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Vigilance Commissioners to act as the Central Vigilance Commissioner until the appointment of a new Central Vigilance Commissioner to fill such vacancy.

Vigilance
Commissioner
to act as Central
Vigilance
Commissioner
in certain
circumstances.

(2) When the Central Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the President may, by notification, authorise in this behalf, shall discharge the functions of the Central Vigilance Commissioner until the date on which the Central Vigilance Commissioner resumes his duties.

Power relating to inquiries.

11. The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or other documents; and

(f) any other matter which may be prescribed.

Proceedings before Commission to be judicial proceedings.

12. The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

2 of 1974.

45 of 1860.

CHAPTER IV

EXPENSES AND ANNUAL REPORT

Expences of Commission to be charged on the Consolidated Fund of India.

13. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the Central Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, shall be charged on the Consolidated Fund of India.

Annual report.

14. (1) It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission within six months of the close of the year under report.

(2) The report referred to in sub-section (1) shall contain a separate part on the functioning of the Delhi Special Police Establishment in so far as it relates to sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946.

25 of 1946.

(3) On receipt of such report, the President shall cause the same to be laid before each House of Parliament.

CHAPTER V

MISCELLANEOUS

Protection of action taken in good faith.

15. No suit, prosecution or other legal proceeding shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Act.

Central Vigilance Commissioner, Vigilance Commissioner and staff to be public servants.

16. The Central Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Report of any inquiry made on reference by Commission to be forwarded to that Commission.

17. (1) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

(2) The Commission shall, on receipt of such report and after taking into consideration any other factors relevant thereto, advise the Central Government and corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, as to the further course of action.

(3) The Central Government and the corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the Central Government, any corporation established by or under any Central Act, Government company, society or local authority owned or controlled by the Central Government, as the case may be, does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission.

18. The Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work in that Government and in the said corporations, Government companies, societies and local authorities.

Power to call for information.

19. The Central Government shall, in making any rules or regulations governing the vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the Union or to members of the All-India Services, consult the Commission.

Consultation with Commission in certain matters.

20. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the number of members of the staff and their conditions of service under section 7;
- (b) any other power of the civil court to be prescribed under clause (f) of section 11; and
- (c) any other matter which is required to be, or may be, prescribed.

21. (1) The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of this Act.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the duties and the powers of the Secretary under sub-section (4) of section 3; and
- (b) the procedure to be followed by the Commission under sub-section (2) of section 9.

22. Every notification issued under clause (b) of sub-section (2) of section 8 and every rule made by the Central Government and every regulation made by the Commission under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or the regulation, or both Houses agree that the notification or the rule or the regulation should not be made, the notification or the rule or the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.

Notification, rule, etc., to be laid before Parliament.

23. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

24. With effect from the constitution of the Commission under sub-section (1) of section 3, the Central Vigilance Commission set up by the Resolution of the Government of India in the Ministry of Home Affairs No. 24/7/64-AVD, dated the 11th February, 1964 (hereafter referred to in this section as the existing Vigilance Commission) shall, in so far as its functions are not inconsistent with the provisions of this Act, continue to discharge the said functions and—

Provisions relating to existing Vigilance Commission.

(a) all actions and decisions taken by the Vigilance Commission insofar as such actions and decisions are relatable to the functions of the Commission constituted under this Act shall be deemed to have been taken by the Commission;

(b) all proceedings pending before the Vigilance Commission, insofar as such proceedings relate to the functions of the Commission, shall be deemed to be transferred to the Commission and shall be dealt with in accordance with the provisions of this Act;

(c) the employees of the Vigilance Commission shall be deemed to have become the employees of the Commission on the same terms and conditions;

(d) all the assets and liabilities of the Vigilance Commission shall be transferred to the Commission.

Appointments,
etc., of officers
of Directorate
of
Enforcement.

25. Notwithstanding anything contained in the Foreign Exchange Management Act, 1999 or any other law for the time being in force,— 42 of 1999.

(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

(i) the Central Vigilance Commissioner — Chairperson;

(ii) Vigilance Commissioners — Members;

(iii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;

(iv) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;

(v) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;

(b) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;

(c) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(d) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(e) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(f) the Committee referred to in clause (a) shall, in consultation with the Director of Enforcement, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(g) on receipt of the recommendation under clause (f), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.

Amendment
of Act 25 of
1946.
Interpretation
section.

26. In the Delhi Special Police Establishment Act, 1946,—

(a) after section 1, the following section shall be inserted, namely:—

“1A. Words and expressions used herein and not defined but defined in the Central Vigilance Commission Act, 2003, shall have the meanings, respectively, assigned to them in that Act.”;

(b) for section 4, the following sections shall be substituted, namely:—

“4. (1) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall vest in the Commission.

49 of 1988.

Superintendence
and adminis-
tration of
Special Police
Establishment.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

4A. (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

Committee for appointment of Director.

- | | | |
|--|---|--------------|
| (a) the Central Vigilance Commissioner | — | Chairperson; |
| (b) Vigilance Commissioners | — | Members; |
| (c) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government | — | Member; |
| (d) Secretary (Coordination and Public Grievances) in the Cabinet Secretariat | — | Member. |

(2) While making any recommendation under sub-section (1), the Committee shall take into consideration the views of the outgoing Director.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951,

61 of 1951.

for being considered for appointment as the Director.

4B. (1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

Terms and conditions of service of Director.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.

4C. (1) The Committee referred to in section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Superintendent of Police and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

Appointment for posts of Superintendent of Police and above, extension and curtailment of their tenure, etc.

(2) On receipt of the recommendation under sub-section (1), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.”;

(c) after section 6, the following section shall be inserted, namely:—

“6A. (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to—

Approval of Central Government to conduct inquiry or investigation.

(a) the employees of the Central Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting

49 of 1988.

or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the *Explanation* to section 7 of the Prevention of Corruption Act, 1988." 49 of 1988.

Repeal and
saving.

27. (1) The Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD. III, dated the 4th April, 1999 as amended *vide* Resolution of even number, dated the 13th August, 2002 is hereby repealed.

(2) Notwithstanding such repeal and the cesser of operation of the Central Vigilance Commission Ordinance, 1999, anything done or any action taken under the said Resolution and the said Ordinance including the appointments made and other actions taken or anything done or any action taken or any appointment made under the Delhi Special Police Establishment Act, 1946 and the Foreign Exchange Regulation Act, 1973 as amended by the said Ordinance shall be deemed to have been made or done or taken under this Act or the Delhi Special Police Establishment Act, 1946 and the Foreign Exchange Regulation Act, 1973 as if the amendments made in those Acts by this Act were in force at all material times.

Ord.
4 of 1999.
25 of 1946.
46 of 1973.

THE SCHEDULE

[See section 5(3)]

Form of oath or affirmation to be made by the Central Vigilance Commissioner or Vigilance Commissioner:—

"I, A. B., having been appointed Central Vigilance Commissioner (or Vigilance Commissioner) of the Central Vigilance Commission do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the constitution and the laws."

Sd/-

DR. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President

GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/80/2003/Act-4603/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 12th September, 2003/Bhadra 21, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 11th September, 2003 and is hereby published for general information:-

THE ELECTION AND OTHER RELATED LAWS (AMENDMENT) ACT, 2003

An Act

(ACT No. 46 of 2003)

(11th September, 2003)

further to amend the Representation of the People Act, 1951, the Companies Act, 1956 and the Income-tax Act, 1961.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Election and Other Related Laws (Amendment) Act, 2003. Short title.

CHAPTER II

AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

43 of 1951.

2. After section 29A of the Representation of the People Act, 1951 (hereafter in this Chapter referred to as the principal Act), the following sections shall be inserted, namely:—

1 of 1956.

'29B. Subject to the provisions of the Companies Act, 1956, every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Insertion of new sections 29B and 29C.

Political parties entitled to accept contribution.

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976.

49 of 1976.

VI-Ex-11-1

Explanation.—For the purposes of this section and section 29C,—

(a) "company" means a company as defined in section 3;

(b) "Government company" means a company within the meaning of section 617; and

(c) "contribution" has the meaning assigned to it under section 293A, of the Companies Act, 1956 and includes any donation or subscription offered by any person to a political party; and

1 of 1956.

(d) "person" has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961, but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

43 of 1961.

Declaration of donation received by the political parties.

29C. (1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 to the Election Commission.

43 of 1961.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3), then, notwithstanding anything contained in the Income-tax Act, 1961, such political party shall not be entitled to any tax relief under that Act.

43 of 1961.

Insertion of new section 39A.

Allocation of equitable sharing of time.

3. After section 39 of the principal Act, the following section shall be inserted, namely:—

'39A. (1) Notwithstanding anything contained in any other law for the time being in force, the Election Commission shall, on the basis of the past performance of a recognised political party, during elections, allocate equitable sharing of time on the cable television network and other electronic media in such manner as may be prescribed to display or propagate any election matter or to address public in connection with an election.

(2) The allocation of equitable sharing of time under sub-section (1), in respect of an election, shall be made after the publication of list of contesting candidates under section 38 for the election and shall be valid till forty-eight hours before the hour fixed for poll for such election.

(3) The allocation of equitable sharing of time under sub-section (1) shall be binding on all political parties concerned.

(4) The Election Commission may, for the purposes of this section, make code of conduct for cable operators and electronic media and the cable operators and every person managing or responsible for the management of the electronic media shall abide by such code of conduct.

Explanation.—For the purposes of this section,—

(a) "electronic media" includes radio and any other broadcasting media notified by the Central Government in the Official Gazette;

(b) "cable television network" and "cable operator" have the meanings respectively assigned to them under the Cable Television Networks (Regulation) Act, 1995.

7 of 1995.

4. In section 77 of the principal Act, in sub-section (I), for *Explanations 1* and 3, the following *Explanations* shall be substituted, namely:— Amendment of section 77.

Explanation 1.—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section;

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.—For the purposes of clause (a) of *Explanation 1*, the expression "leaders of a political party", in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act :

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

5. After Part V of the principal Act, the following Part shall be inserted, Insertion of new Part VA.
namely:—

PART VA

FREE SUPPLY OF CERTAIN MATERIAL TO CANDIDATES OF
RECOGNISED POLITICAL PARTIES.

Free supply of
copies of elec-
toral rolls.

78A. (1) The Government shall, at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State, supply, free of cost, to the candidates of recognised political parties such number of copies of the electoral roll, as finally published under the Representation of the People Act, 1950 and such other material as may be prescribed.

43 of 1950.

(2) The material referred to in sub-section (1) shall be supplied,—

(i) subject to such conditions as may be imposed by the Central Government in consultation with the Election Commission with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77; and

(ii) through such officers as may be specified by the Election Commission who shall act in accordance with such general or special directions as may be given by the Election Commission.

Supply of cer-
tain items to
candidates, etc.

78B. (1) The Election Commission shall, at any time between the date of publication of the notification calling the election for the purposes of constituting the House of the People or the Legislative Assembly of a State and the date on which the poll is to be taken, supply or cause to be supplied, such items as the Central Government may, by order, determine in consultation with the Election Commission, to the electors in the constituencies concerned or to the candidates set up by the recognised political parties.

(2) Where the Election Commission supplies the items to the candidates under sub-section (1), the Central Government may, in consultation with the Election Commission, impose conditions with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77.

Explanation.—For the purposes of section 39A, this Chapter and clause (hh) of sub-section (2) of section 169, the expression "recognised political party", has the meaning assigned to it in the Election Symbols (Reservation and Allotment) Order, 1968.

Amendment of
section 169.

6. In section 169 of the principal Act, in sub-section (2),—

(i) after clause (aa), the following clause shall be inserted, namely:—

"(aaa) the form of contribution report;";

(ii) after clause (b), the following clause shall be inserted, namely:—

"(bb) the manner of allocation of equitable sharing of time on the cable television network and other electronic media;";

(iii) after clause (h), the following clause shall be inserted, namely:—

"(hh) the material to be supplied by the Government to the candidates of recognised political parties at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State;".

CHAPTER III

AMENDMENT OF THE COMPANIES ACT, 1956

7. In section 293A of the Companies Act, 1956, after sub-section (5), the following *Explanation* shall be inserted, namely:—

Amendment of section 293A of Act 1 of 1956.

'Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.'

43 of 1951.

CHAPTER IV

AMENDMENTS OF THE INCOME-TAX ACT, 1961

43 of 1961.

8. In section 13A of the Income-tax Act, 1961 (hereafter in this Chapter referred to as the Income-tax Act),—

Amendment of section 13A.

(i) in the proviso, in clause (b), for the words "ten thousand rupees", the words "twenty thousand rupees" shall be substituted;

(ii) after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

"Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 for a financial year, no exemption under this section shall be available for that political party for such financial year.";

43 of 1951.

(iii) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.'

43 of 1951.

9. In section 80A of the Income-tax Act, in sub-section (3), for the word, figures and letters "section 80GGA", the words, figures and letters "section 80GGA or section 80GGC" shall be substituted.

Amendment of section 80A.

10. After section 80GGA of the Income-tax Act, the following sections shall be inserted, namely:—

Insertion of new sections 80GGB and 80GGC.

'80GGB. In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any political party.

Deduction in respect of contributions given by companies to political parties.

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this section, the word "contribute", with its grammatical variation, has the meaning assigned to it under section 293A of the Companies Act, 1956.

1 of 1956.

80GGC. In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party.

Deduction in respect of contributions given by any person to political parties.

Explanation.—For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.'

43 of 1951.

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President
GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/81/2003/Act-4703/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 19th September, 2003/Bhadra 28, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 19th September, 2003 and is hereby published for general information:-

THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) ACT, 2003

An Act

(ACT No. 47 of 2003)

(19th September, 2003)

*further to amend the Constitution (Scheduled Tribes) Order, 1950 to modify the list of
Scheduled Tribes in the State of Assam.*

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Scheduled Tribes) Order (Amendment) Act, 2003. Short title.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in Amendment of
the Constitu-
tion (Scheduled
Tribes) Order,
1950.
~~Part II—Assam,—~~

(i) for the sub-part heading "I. In the autonomous districts", the following shall be substituted, namely:—

"I. In the autonomous districts of Karbi Anglong and North Cachar Hills";

(ii) for the sub-part heading "II. In the State of Assam excluding the autonomous districts", the following shall be substituted, namely:—

"II. In the State of Assam including the Bodoland Territorial Areas District and excluding the autonomous districts of Karbi Anglong and North Cachar Hills."

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar



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GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/82/2003/Act-4803/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 19th September, 2003/Bhadra 28, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 19th September, 2003 and is hereby published for general information:-

THE NATIONAL BANK FOR AGRICULTURE AND RURAL DEVELOPMENT (AMENDMENT) ACT, 2003

An Act

(ACT No. 48 of 2003)

(19th September, 2003)

further to amend the National Bank for Agriculture and Rural Development Act, 1981.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. This Act may be called the National Bank for Agriculture and Rural Development (Amendment) Act, 2003. Short title.

61 of 1981. 2. In section 21 of the National Bank for Agriculture and Rural Development Act, 1981 Amendment of section 21.
(hereinafter referred to as the principal Act),—

(a) in sub-section (1), in the opening portion, for the words “to State co-operative banks”, the words “to State co-operative banks, central co-operative banks” shall be substituted;

(b) in sub-section (3), in clause (a), for the words “to any State co-operative bank”, the words “to any State co-operative bank or central co-operative bank” shall be substituted.

Substitution of
new section
for section
22.

Conversion
loan for
production
credit.

3. For section 22 of the principal Act, the following section shall be substituted, namely:—

“22. Where the National Bank is satisfied that owing to drought, famine or other natural calamities, military operations or enemy action, any State co-operative bank, central co-operative bank, regional rural bank or any such financial institution or any financial institution falling under any such class of financial institutions, as may be approved by the Reserve Bank in this behalf, requires assistance under this section, it may provide to such bank or institution such financial assistance as it may deem fit by way of making loans and advances repayable on the expiry of fixed periods not exceeding seven years and on such terms and conditions as may be specified in this behalf by the National Bank:

Provided that loans and advances may be made under this section only for the purpose of enabling the borrowing bank or institution,—

(a) to pay any dues to the National Bank for credit extended for financing agricultural operations or the marketing of crops under clause (i) of sub-section (1) of section 21, or

(b)(i) to make loans or advances to central co-operative banks or primary rural credit societies in cases where the borrowing bank is a State co-operative bank, and

(ii) to make loans and advances to primary rural credit societies in cases where the borrowing bank is a central co-operative bank,

and such loans or advances in both the cases being repayable on the expiry of fixed periods not being less than eighteen months and not exceeding seven years, by way of reimbursement of loans and advances made by such co-operative banks or societies for agriculture or agricultural operations or for reimbursement of such loans or advances which have been converted into loans or advances repayable on expiry of fixed periods not being less than eighteen months and not exceeding seven years from the date of conversion:

Provided further that no loan or advance shall be made under this section to a State co-operative bank or a central co-operative bank unless such loan or advance is fully guaranteed as to the repayment of the principal and payment of interest, by the State Government.”

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 13th January, 2004.

No. RPB/83/2003/Act-4903/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 30th September, 2003/Asvina 8, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 28th September, 2003 and is hereby published for general information:-

THE REPATRIATION OF PRISONERS ACT, 2003

An Act

(ACT No. 49 of 2003)

(28th September, 2003)

to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Repatriation of Prisoners Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "contracting State" means a Government of any country or place outside India in respect of which arrangement has been made by the Central Government with the Government of such country or place through a treaty or otherwise for transfer of prisoners from India to such country or place and *vice versa* and includes any other Government of such country or place specified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 3;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "prisoner" means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in contracting States;

(d) "warrant" means a warrant issued under sub-section (1) of section 7 or sub-section (2) of section 12, as the case may be;

(e) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 have the meanings respectively assigned to them in that Code.

2 of 1974.

Application of Act.

3. (1) The Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall apply to a country or place outside India as may be specified in the notification.

(2) If the notification under sub-section (1) relates to a country or place outside India with which a treaty has been entered into by India for the transfer of prisoners between that country and India, then, such notification shall also set out the full text of the said treaty and shall in no case remain in force longer than the period of the said treaty.

(3) If the Central Government is of the opinion that, with respect to a country or place outside India, provisions of this Act require to be modified to give effect to a treaty in relation to such country, it may, by notification in the Official Gazette, direct that the application of this Act to such country shall be subject to such conditions, exceptions and modifications specified in the notification.

Application for transfer by a prisoner.

4. Any prisoner who is a citizen of a contracting State may make an application to the Central Government for transfer of his custody from India to that contracting State:

Provided that if a prisoner is not able to make an application himself because of his ill health, mental condition, old age or being a minor, then, the application may be made by any other person entitled to act on his behalf.

Consideration of request by Central Government.

5. (1) On receipt of the application under section 4, the Central Government shall direct the officer in charge of the prison, where the prisoner is confined, to furnish such information which in the opinion of that Government is relevant for the purpose of transfer.

(2) On receipt of the information under sub-section (1), if the Central Government is satisfied that—

- (a) no inquiry, trial or any other proceeding is pending against the prisoner;
- (b) death penalty has not been awarded to the prisoner;
- (c) the prisoner has not been convicted for an offence under the martial law;
- and
- (d) transfer of custody of the prisoner to the contracting State shall not be prejudicial to the sovereignty, security or any other interest of India,

it shall pass an order for forwarding the application of the prisoner to the contracting State.

Comments of contracting State.

6. (1) The application of the prisoner shall be forwarded by the Central Government through prescribed means to the Government of the contracting State to deal with such application along with the following information, namely:—

- (a) a copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the prisoner;
- (b) the nature, duration and date of commencement of the sentence of the prisoner;
- (c) medical report or any other report regarding the antecedents and character of the prisoner, where it is relevant for the disposal of his application or for deciding the nature of his confinement; and
- (d) any other information which the Central Government may consider necessary.

(2) Where any application of a prisoner forwarded by the Central Government has been accepted by the contracting State, the Central Government may seek from such

contracting State, all or any of the following information or documents before taking decision to transfer the prisoner to the contracting State, namely:—

(a) a statement or document indicating that the prisoner is a citizen of the contracting State;

(b) a copy of the relevant law of the contracting State constituting the act or omission as the offence, on account of which the sentence has been passed in India, as if such act or omission was an offence under the law of that State;

(c) a statement of the fact or any law or regulation relating to the duration and enforcement of the sentence of the prisoner in the contracting State upon his transfer;

(d) the willingness of the contracting State to accept the transfer of the prisoner and an undertaking to administer the remaining part of the sentence of the prisoner;

(e) an undertaking to comply with the conditions, if any, specified by the Central Government; and

(f) any other information or document which the Central Government may consider necessary.

7. (1) If the Central Government, on receipt of a communication from the concerned contracting State,—

Consideration of request by Central Government.

(a) expressing its willingness to accept the transfer of the prisoner; and

(b) undertaking to comply with the conditions specified in the warrant,

is satisfied that the prisoner should be transferred to the said State, the Central Government may, notwithstanding anything contained in any other law for the time being in force, issue a warrant in accordance with the provisions of section 8 in such form as may be prescribed.

(2) Where a warrant is issued under sub-section (1), the Central Government shall inform the contracting State accordingly and request that State to specify the person to whom and the place within India where custody of the prisoner shall be delivered.

8. (1) The Central Government shall authorise an officer not below the rank of a Joint Secretary to a State Government, within the limits of whose jurisdiction the place of imprisonment of the prisoner is situated, to issue a warrant on behalf of the Central Government under sub-section (1) of section 7 directing the officer in charge of the prison therein to deliver the custody of the prisoner to the person authorised by the contracting State to which the prisoner is to be transferred, presenting such person a copy of the warrant together with all the records relating to the prisoner and the personal effects taken from the prisoner at the time of his admission in the prison.

Provision to issue warrant for transfer.

(2) Upon the presentation of a warrant referred to in sub-section (1), the officer in charge of the prison shall forthwith comply with the warrant and obtain thereon the signature of the person to whom delivery of the prisoner, records and the personal effects relating to the prisoner to be removed from the prison is given.

(3) After delivery of the prisoner to the person authorised by the contracting State under sub-section (2), the officer in charge of the prison transferring the prisoner shall forward a copy of the warrant to the court which committed the prisoner to the prison, along with a statement that the prisoner has been delivered to the person authorised by the contracting State under sub-section (1).

(4) The delivery of the prisoner in compliance of the warrant issued under sub-section (1) shall discharge the officer in charge of the prison from the responsibility of keeping the prisoner in his custody.

9. It shall be lawful for the person authorised by the contracting State to whom the custody of a prisoner is delivered under the provisions of sub-section (2) of section 8 to receive and hold in custody such prisoner and to convey him out of India and if the prisoner escapes from such custody within India, the prisoner may be arrested without

Operation of warrant and retaking prisoner.

warrant by any person who shall without undue delay deliver such prisoner to the officer in charge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code and shall also be liable for such sentence of imprisonment in India which he would have to undergo if the delivery of custody of such prisoner had not been made under section 8.

45 of 1860.

Transfer of
record.

10. Where a prisoner is or is to be transferred to a contracting State under the provisions of this Act, the Central Government may requisition the records of any proceeding, including judicial proceedings relating to that prisoner from any court or office, and may direct that such records shall be sent to the Government of the contracting State.

Power of court
and Central
Government
shall not be
affected.

11. The transfer of a prisoner from India to a contracting State shall not affect the power of the court which passed the judgment to review its judgment and power of the Central Government or State Government to suspend, remit or commute the sentence in accordance with any law for the time being in force.

Transfer into
India.

12. (1) The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting State wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between India and that State.

(2) If the Central Government accepts the request for a transfer under sub-section (1), then, notwithstanding anything contained in any other law for the time being in force, it may issue a warrant to detain the prisoner in prison in accordance with the provisions of section 13 in such form as may be prescribed.

Determination
of prison and
issue of
warrant for
receiving
transfer in
India.

13. (1) The Central Government shall, in consultation with a State Government, determine the prison situated within the jurisdiction of such State Government where the prisoner with respect to whom a warrant has been issued under sub-section (2) of section 12, shall be lodged and the officer who shall receive and hold him in custody.

(2) The Central Government shall authorise any officer not below the rank of a Joint Secretary to that Government to issue a warrant under sub-section (2) of section 12 and to direct the officer referred to in sub-section (1) to receive and hold the prisoner, with respect to whom the warrant is issued, in custody.

(3) It shall be lawful for the officer referred to in sub-section (1) to receive and hold in custody any prisoner delivered to him under the direction made in the warrant issued under sub-section (2) of section 12 and to convey such prisoner to any prison determined under sub-section (1) for being dealt with in accordance with the said warrant and if the prisoner escapes from such custody, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the officer in charge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code and shall also be liable to be dealt with in accordance with the said warrant.

45 of 1860.

(4) A warrant under sub-section (2) of section 12 shall provide for—

(a) the bringing of the prisoner into India from a contracting State or a place outside India;

(b) the taking of such prisoner in any part of India being a place at which effect may be given to the provisions contained in the warrant;

(c) the nature and duration of imprisonment of the prisoner in accordance with the terms and conditions referred to in sub-section (1) of section 12 and the imprisonment of such prisoner in India in such manner as may be contained in the warrant; and

(d) any other matter which may be prescribed.

(5) Notwithstanding anything contained in any other law for the time being in force, the imprisonment of a prisoner in compliance with a warrant issued under sub-section (2) of section 12 shall be deemed to be imprisonment under a sentence of a court competent to pass such a sentence of imprisonment in India.

(6) If the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India:

Provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting State to the prisoner and such adapted sentence shall not aggravate the punishment, by its nature, duration or both relating to the sentence imposed in the contracting State.

14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the means through which an application may be forwarded under sub-section (1) of section 6;

(b) the form in which a warrant may be issued under sub-section (1) of section 7;

(c) the form in which a warrant may be issued under sub-section (2) of section 12; and

(d) any other matter which may be prescribed under clause (d) of sub-section (4) of section 13.

15. Every notification issued under sub-sections (1) and (3) of section 3 and every rule made under section 14 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in marking any modification in the notification or rule or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

Laying of rules, etc.

Power to
remove
difficulties.

16. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar .



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/3/2004/ACT-5203/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 23rd December, 2003/Pausa 2, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 23rd December, 2003 and is hereby published for general information :-

THE RAILWAY PROTECTION FORCE (AMENDMENT) ACT, 2003.

(Act No. 52 of 2003)

AN ACT

(23rd December, 2003).

further to amend the Railway Protection Force Act, 1957.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

- | | | |
|-------------|---|-------------------------------|
| | 1. (1) This Act may be called the Railway Protection Force (Amendment) Act, 2003. | Short title and commencement. |
| | (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. | |
| 23 of 1957. | 2. In the Railway Protection Force Act, 1957 (hereinafter referred to as the principal Act), in the long title, for the words "railway property", the words "railway property, passenger area and passengers" shall be substituted. | Amendment of long title. |
| | 3. In section 2 of the principal Act, after clause (c), the following clauses shall be inserted, namely:— | Amendment of section 2. |
| 24 of 1989. | ‘(ca) “passenger” shall have the meaning assigned to it in the Railways Act, 1989; | |

(cb) "passenger area" shall include railway platform, train, yard and such other area as is frequently visited by passengers;".

Substitution
of new
section for
section 11.

4. For section 11 of the principal Act, the following section shall be substituted, namely:—

Duties of
members of
Force.

"11. It shall be the duty of every superior officer and member of the Force—

(a) promptly to execute all orders lawfully issued to him by his superior authority;

(b) to protect and safeguard railway property, passenger area and passengers;

(c) to remove any obstruction in the movement of railway property or passenger area; and

(d) to do any other act conducive to the better protection and security of railway property, passenger area and passengers."

Amendment
of section
12.

5. In section 12 of the principal Act, for the words "railway property" wherever they occur, the words "railway property, passenger area and passengers" shall be substituted.

Amendment
of section
14.

6. In section 14 of the principal Act, for the words "to a police officer", the words "to a police officer together with a detailed report of the circumstances leading to the arrest of such person" shall be substituted.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By Order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/5/2004/ACT-5403/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 31st December, 2003/Pausa 10, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 2003 and is hereby published for general information :-

THE TAXATION LAWS (AMENDMENT) ACT, 2003.

(Act No. 54 of 2003)

AN ACT

(30th December, 2003).

further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Expenditure-tax Act, 1987.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Taxation Laws (Amendment) Act, 2003.

(2) Save as otherwise provided in this Act, it shall be deemed to have come into force on the 8th day of September, 2003.

Short title and
commence-
ment.

CHAPTER II

AMENDMENTS TO THE INCOME-TAX ACT, 1961

43 of 1961.

2. In section 10 of the Income-tax Act, 1961 (hereafter in this Chapter referred to as the Income-tax Act), in clause (15),—

Amendment
of section 10.

(A) after sub-clause (iiia), the following sub-clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2001, namely:—

“(iiib) interest payable to the Nordic Investment Bank, being a multilateral financial institution constituted by the Governments of Denmark, Finland, Iceland, Norway and Sweden, on a loan advanced by it to a project approved by the Central Government in terms of the Memorandum of Understanding entered into by the Central Government with that Bank on the 25th day of November, 1986;”;

(B) in sub-clause (iv),—

(a) in item (c), the existing *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—

“*Explanation 2.*—For the removal of doubts, it is hereby declared that the usance interest payable outside India by an undertaking engaged in the business of ship-breaking in respect of purchase of a ship from outside India shall be deemed to be the interest payable on a debt incurred in a foreign country in respect of the purchase outside India;”;

(b) in the *Explanation 1* occurring below item (i), after clause (d), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1991, namely:—

“(da) the business of ship-breaking; or”.

Insertion of
new section
10BA.

Special
provisions in
respect of
export of
certain articles
or things.

3. After section 10B of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2004, namely:—

‘10BA. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export out of India of eligible articles or things, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment year, deduction under section 10A or section 10B has been claimed, the undertaking shall not be entitled to the deduction under this section:

Provided further that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

(2) This section applies to any undertaking which fulfils the following conditions, namely:—

(a) it manufactures or produces the eligible articles or things without the use of imported raw materials;

(b) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(c) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of this clause as they apply for the purposes of clause (ii) of sub-section (2) of that section;

(d) ninety per cent. or more of its sales during the previous year relevant to the assessment year are by way of exports of the eligible articles or things;

(e) it employs twenty or more workers during the previous year in the process of manufacture or production.

(3) This section applies to the undertaking, if the sale proceeds of the eligible articles or things exported out of India are received in or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation.—For the purposes of this sub-section, the expression “competent authority” means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

(4) For the purposes of sub-section (1), the profits derived from export out of India of the eligible articles or things shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things bears to the total turnover of the business carried on by the undertaking.

(5) The deduction under sub-section (1) shall not be admissible, unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, where a deduction is allowed under this section in computing the total income of the assessee, no deduction shall be allowed under any other section in respect of its export profits.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

Explanation.—For the purposes of this section,—

(a) “convertible foreign exchange” means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999, and any rules made thereunder or any other corresponding law for the time being in force;

(b) “eligible articles or things” means all hand-made articles or things, which are of artistic value and which requires the use of wood as the main raw material;

(c) “export turnover” means the consideration in respect of export by the undertaking of eligible articles or things received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India;

(d) “export out of India” shall not include any transaction by way of sale or otherwise, in a shop, emporium or any other establishment situate in India, not involving clearance of any customs station as defined in the Customs Act, 1962.

Amendment of
section 115P.

4. In section 115P of the Income-tax Act, for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

Amendment of
section 115S.

5. In section 115S of the Income-tax Act, for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

Amendment of
section 132B.

6. In section 132B of the Income-tax Act, in sub-section (4), in clause (a), for the words "eight per cent.", the words "six per cent." shall be substituted.

Amendment
of section
158BFA.

7. In section 158BFA of the Income-tax Act, in sub-section (1), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

Amendment of
section 201.

8. In section 201 of the Income-tax Act, in sub-section (1A), for the words "fifteen per cent.", the words "twelve per cent." shall be substituted.

Amendment of
section 206C.

9. In section 206C of the Income-tax Act,—

(a) in sub-section (1),—

(i) for the Table, the following Table shall be substituted, namely:—

"TABLE

Sl. No.	Nature of goods	Percentage
(1)	(2)	(3)
(i)	Alcoholic liquor for human consumption	One per cent.
(ii)	Tendu leaves	Five per cent.
(iii)	Timber obtained under a forest lease	Two and one-half per cent.
(iv)	Timber obtained by any mode other than under a forest lease	Two and one-half per cent.
(v)	Any other forest produce not being timber or tendu leaves	Two and one-half per cent.
(vi)	Scrap	One per cent. : ;

(ii) for the proviso below the Table, the following proviso shall be substituted, namely:—

"Provided that every person, being a seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Act, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.";

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things and not for trading purposes.

(1B) The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Chief Commissioner or Commissioner one

copy of the declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him.”;

(c) in sub-section (3), for the words “seven days”, the words “the prescribed time” shall be substituted;

(d) in sub-section (5), for the words “ten days from the date of debit”, the words “such period as may be prescribed from the time of debit” shall be substituted;

(e) in sub-section (7), for the words “one and one-fourth per cent.”, the words “one per cent.” shall be substituted;

(f) in the *Explanation* occurring at the end, in clause (a), for sub-clauses (i) and (ii), the following sub-clauses shall be substituted, namely:—

“(i) a public sector company, the Central Government, a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(ii) a buyer in the retail sale of such goods purchased by him for personal consumption;”.

10. In section 220 of the Income-tax Act, in sub-section (2), for the words “one and one-fourth per cent.”, the words “one per cent.” shall be substituted.

Amendment of section 220.

11. In section 230 of the Income-tax Act, in sub-section (2), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or the first proviso to sub-section (1A)” shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 2003.

Amendment of section 230.

12. In section 234A of the Income-tax Act, in sub-sections (1) and (3), for the words “one and one-fourth per cent.”, the words “one per cent.” shall be substituted.

Amendment of section 234A.

13. In section 234B of the Income-tax Act, in sub-sections (1) and (3), for the words “one and one-fourth per cent.”, the words “one per cent.” shall be substituted.

Amendment of section 234B.

14. In section 234C of the Income-tax Act, in sub-section (1),—

Amendment of section 234C.

(i) in clause (a), in sub-clauses (i) and (ii), for the words “one and one-fourth per cent.”, the words “one per cent.” shall be substituted;

(ii) in clause (b), in sub-clauses (i) and (ii), for the words “one and one-fourth per cent.”, the words “one per cent.” shall be substituted.

15. In section 234D of the Income-tax Act, in sub-section (1), for the words “two-third per cent.”, the words “one-half per cent.” shall be substituted.

Amendment of section 234D.

16. In section 244A of the Income-tax Act, in sub-section (1), in clauses (a) and (b), for the words “two-third per cent.”, the words “one-half per cent.” shall be substituted.

Amendment of section 244A.

17. In section 272A of the Income-tax Act, in sub-section (2), after clause (i), the following clause shall be inserted, namely:—

Amendment of section 272A.

“(j) to deliver or cause to be delivered in due time a copy of the declaration referred to in sub-section (1A) of section 206C,”.

18. In the Second Schedule to the Income-tax Act, in rule 68A, in sub-rule (3), for the words “eight per cent.”, the words “six per cent.” shall be substituted.

Amendment of Second Schedule.

CHAPTER III

AMENDMENTS TO THE WEALTH-TAX ACT, 1957

Amendment
of section
17B.

19. In section 17B of the Wealth-tax Act, 1957 (hereafter in this Chapter referred to as the Wealth-tax Act), in sub-sections (1) and (3), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

27 of 1957.

Amendment of
section 31.

20. In section 31 of the Wealth-tax Act, in sub-section (2),—

(a) for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted;

(b) in the second proviso, for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

Amendment of
section 34A.

21. In section 34A of the Wealth-tax Act,—

(a) in sub-section (3), for the words "eight per cent.", the words "six per cent." shall be substituted;

(b) in sub-section (4B), in clause (a), for the words "two-third per cent.", the words "one-half per cent." shall be substituted.

CHAPTER IV

AMENDMENT TO THE EXPENDITURE-TAX ACT, 1987

Amendment
of section 14
of Act 35 of
1987.

22. In section 14 of the Expenditure-tax Act, 1987, for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

Repeal and
saving.

23. (1) The Taxation Laws (Amendment) Ordinance, 2003 is hereby repealed.

Ord. 2 of
2003.

(2) Notwithstanding such repeal, anything done or any action taken under the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Expenditure-tax Act, 1987, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act.

43 of 1961.
27 of 1957.
35 of 1987.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/8/2004/ACT-5703/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 31st December, 2003/Pausa 10, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 2003 and is hereby published for general information :-

THE ELECTRICITY (AMENDMENT) ACT, 2003.

(Act No. 57 of 2003)

AN ACT

(30th December, 2003).

to amend the Electricity Act, 2003.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Electricity (Amendment) Act, 2003.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

36 of 2003.

2. In section 14 of the Electricity Act, 2003 (hereinafter referred to as the principal Act), in the sixth proviso, for the brackets and words "(including the capital adequacy, creditworthiness, or code of conduct)", the words "relating to the capital adequacy, creditworthiness, or code of conduct" shall be substituted.

Amendment
of section 14.

Amendment
of section 42.

3. In section 42 of the principal Act, in sub-section (2), after the fourth proviso, the following proviso shall be inserted, namely:—

“Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.”.

Substitution of
new section
for section
121.

4. For section 121 of the principal Act, the following section shall be substituted, namely:—

Power of
Appellate
Tribunal.

“121. The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act.”.

Amendment
of section
135.

5. In section 135 of the principal Act, in sub-section (2),—

(i) in clause (a), for the words “has been, is being, or is likely to be,” the words “has been or is being” shall be substituted;

(ii) in clause (b), for the words “has been, is being, or is likely to be,” the words “has been or is being” shall be substituted.

Substitution of
new sections
for sections
139 and 140.

6. For sections 139 and 140 of the principal Act, the following sections shall be substituted, namely:—

Negligently
breaking or
damaging
works.

“139. Whoever, negligently breaks, injures, throws down or damages any material connected with the supply of electricity, shall be punishable with fine which may extend to ten thousand rupees.

Penalty for
intentionally
injuring works.

140. Whoever, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with fine which may extend to ten thousand rupees.”.

Amendment
of section
146.

7. In section 146 of the principal Act, the following proviso shall be inserted, namely:—

“Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.”.

Sd/-

T. K. VISWANATHAN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,

Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/9/2004/ACT-5803/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 31st December, 2003/Pausa 10, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 2003 and is hereby published for general information :-

THE INDIAN MEDICINE CENTRAL COUNCIL (AMENDMENT) ACT, 2003.

AN ACT

(Act No. 58 of 2003)

(30th December, 2003).

further to amend the Indian Medicine Central Council Act, 1970.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Medicine Central Council (Amendment) Act, 2003.

Short title and
commence-
ment.

(2) It shall be deemed to have come into force on the 7th day of November, 2003.

48 of 1970.

2. In the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the principal Act), in section 2, after clause (e), the following clause shall be inserted, namely:—

Amendment of
section 2.

“(ee) “medical college” means a college of Indian medicine, whether known as such or by any other name, in which a person may undergo a course of study or training including any post-graduate course of study or training which will qualify him for the award of a recognised medical qualification;”

Substitution of
new Chapter
for Chapter
IIA.

3. For Chapter IIA of the principal Act, the following Chapter shall be substituted, namely:—

‘CHAPTER IIA

PERMISSION FOR NEW MEDICAL COLLEGE, COURSE, ETC.

Permission for
establishment
of new medical
college, new
course of
study, etc.

13A. (1) Notwithstanding anything contained in this Act or any other law for the time being in force,—

(a) no person shall establish a medical college; or

(b) no medical college shall—

(i) open a new or higher course of study or training, including a post-graduate course of study or training, which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training including a post-graduate course of study or training,

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, “person” includes any University or a trust, but does not include the Central Government.

Explanation 2.—For the purposes of this section, “admission capacity”, in relation to any course of study or training, including post-graduate course of study or training, in a medical college, means the maximum number of students as may be fixed by the Central Government from time to time for being admitted to such course or training.

(2) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall refer the scheme to the Central Council for its recommendations.

(3) The scheme referred to in sub-section (2), shall be in such form and contain such particulars and be preferred in such manner and accompanied with such fee, as may be prescribed.

(4) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may,—

(a) if the scheme is defective and does not contain necessary particulars, give a reasonable opportunity to the person or medical college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Central Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (8) and submit it to the Central Government together with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(5) The Central Government may, after considering the scheme and recommendations of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical college concerned and having regard

to the factors referred to in sub-section (8), either approve the scheme with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme as if such scheme had been submitted for the first time under sub-section (2).

(6) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order is communicated by the Central Government to the person or medical college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(7) In computing the time-limit specified in sub-section (6), the time taken by the person or medical college concerned submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded.

(8) The Central Council while making its recommendations under clause (b) of sub-section (4) and the Central Government while passing an order, either approving or disapproving the scheme under sub-section (5), shall have due regard to the following factors, namely:—

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under section 22;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or the course of study or training by persons having recognised medical qualifications;

(f) the requirement of manpower in the field of practice of Indian medicine in the medical college;

(g) any other factors as may be prescribed.

(9) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical college concerned.

Non-recognition of medical qualifications in certain cases.

13B. (1) Where any medical college is established without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training including a post-graduate course of study or training without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college on the basis of such study or training shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall not be deemed to be a recognised medical qualification for the purposes of this Act.

Time for seeking permission for certain existing medical colleges.

13C. (1) If any person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity on or before the commencement of the Indian Medicine Central Council (Amendment) Act, 2003, such person or medical college, as the case may be, shall seek, within a period of three years from the said commencement, permission of the Central Government in accordance with the provisions of section 13A.

(2) If any person or medical college, as the case may be, fails to seek permission under sub-section (1), the provisions of section 13B shall apply, so far as may be, as if permission of the Central Government under section 13A has been refused.

Repeal and saving.

4. (1) The Indian Medicine Central Council (Amendment) Ordinance, 2003 is hereby repealed. Ord. 8 of 2003.

(2) Notwithstanding the repeal of the Indian Medicine Central Council (Amendment) Ordinance, 2003, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Act. Ord. 8 of 2003.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/21/2004/ACT-804/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 12th January, 2004/Pausa 22, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 9th January, 2004 and is hereby published for general information :-

THE INDIAN TELEGRAPH (AMENDMENT) ACT, 2003.

AN ACT

(Act No. 8 of 2004)

(9th January, 2004).

Further to amend the Indian Telegraph Act, 1885.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Telegraph (Amendment) Act, 2003.

(2) It shall be deemed to have come into force on the 1st day of April, 2002.

2. In section 3 of the Indian Telegraph Act, 1885 (hereinafter referred to as the principal Act), clause (1) shall be renumbered as clause (1A) and before clause (1A) as so renumbered, the following clauses shall be inserted, namely:—

'(1) "Fund" means the Universal Service Obligation Fund established under sub-section (1) of section 9A;

(1A) "Universal Service Obligation" means the obligation to provide access to basic telegraph services to people in the rural and remote areas at affordable and reasonable prices.'

Short title and
commencement.

Amendment of
section 3.

13 of 1885.

Amendment
of section 4.

3. In section 4 of the principal Act, in sub-section (1), the following *Explanation* shall be inserted at the end, namely:—

“Explanation.—The payments made for the grant of a licence under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendation made in this behalf by the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997.” 24 of 1997.

Amendment
of section 7.

4. In section 7 of the principal Act, in sub-section (2), after clause (ee), the following clauses shall be inserted, namely:—

“(eea) the manner in which the Fund may be administered;

(eeb) the criteria based on which sums may be released.”.

Insertion of
new Part IIA.

5. After Part II of the principal Act, the following Part shall be inserted, namely:—

“PART IIA

UNIVERSAL SERVICE OBLIGATION FUND

Establishment
of Universal
Service
Obligation
Fund.

9A. (1) On and from the commencement of the Indian Telegraph (Amendment) Act, 2003, there shall be deemed to have been established, for the purposes of this Act, a Fund to be called the Universal Service Obligation Fund.

(2) The Fund shall be under the control of the Central Government and there shall be credited thereto—

(a) any sums of money paid under section 9B;

(b) any grants and loans made by the Central Government under section 9C.

(3) The balance to the credit of the Fund shall not lapse at the end of the financial year.

Crediting of
sums to
Consolidated
Fund of India:

9B. The sums of money received towards the Universal Service Obligation under section 4 shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceeds to the Fund from time to time for being utilised exclusively for meeting the Universal Service Obligation.

Grants and
loans by
Central
Government.

9C. The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants and loans such sums of money as that Government may consider necessary in the Fund.

Administration
and utilisation
of Fund.

9D. (1) The Central Government shall have the power to administer the Fund in such manner as may be prescribed by rules made under this Act.

(2) The Fund shall be utilised exclusively for meeting the Universal Service Obligation.

(3) The Central Government shall be responsible for the co-ordination and ensuring timely utilisation and release of sums in accordance with the criteria as may be prescribed by rules made under this Act.”

Ord. 7 of 2003.

6. (1) The Indian Telegraph (Amendment) Ordinance, 2003, is hereby repealed.

Repeal and saving.

Ord. 7 of 2003.

(2) Notwithstanding the repeal of the Indian Telegraph (Amendment) Ordinance, 2003, anything done or action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/11/2004/Const-8803/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 16th January, 2004/Pausa 26, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 15th January, 2004 and is hereby published for general information :-

THE CONSTITUTION (EIGHTY-EIGHTH AMENDMENT) ACT, 2003.
AN ACT

(15th January, 2004).

further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Eighty-eighth Amendment) Act, 2003.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of
new article
268A.

Service tax
levied by
Union and
collected and
appropriated
by the Union
and the States.

2. After article 268 of the Constitution, the following article shall be inserted, namely:—

“268A. (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause (2).

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—

(a) collected by the Government of India and the States;

(b) appropriated by the Government of India and the States,

in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.”

Amendment
of article 270.

3. In article 270 of the Constitution, in clause (1), for the words and figures “articles 268 and 269”, the words, figures and letter “articles 268, 268A and 269” shall be substituted.

Amendment
of Seventh
Schedule.

4. In the Seventh Schedule to the Constitution, in List I—Union List, after entry 92B, the following entry shall be inserted, namely:—

“92C. Taxes on services.”

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/12/2004/Const-9104/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 2nd January, 2004/Pausa 12, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 1st January, 2004 and is hereby published for general information :-

THE CONSTITUTION (NINETY-FIRST AMENDMENT) ACT, 2003.

AN ACT (1st January, 2004).
further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Ninety-first Amendment) Act, 2003. Short title.
2. In article 75 of the Constitution, after clause (1), the following clauses shall be inserted, namely:— Amendment of article 75.

“(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member

would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.”.

Amendment of
article 164.

3. In article 164 of the Constitution, after clause (1), the following clauses shall be inserted, namely:—

“(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then, the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.”.

Insertion of
new article
361B.

4. After article 361A of the Constitution, the following article shall be inserted, namely:—

Disqualifica-
tion for
appointment
on remunera-
tive political
post.

‘361B. A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

Explanation.—For the purposes of this article,—

(a) the expression “House” has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;

(b) the expression “remunerative political post” means any office—

(i) under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

(ii) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body,

except where such salary or remuneration paid is compensatory in nature.”.

5. In the Tenth Schedule to the Constitution,—

Amendment
of the Tenth
Schedule.

(a) in paragraph 1, in clause (b), the words and figure "paragraph 3 or, as the case may be," shall be omitted;

(b) in paragraph 2, in sub-paragraph (1), for the words and figures "paragraphs 3, 4 and 5", the words and figures "paragraphs 4 and 5" shall be substituted;

(c) paragraph 3 shall be omitted.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By Order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/13/2004/Const-9204/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 8th January, 2004/Pausa 18, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 7th January, 2004 and is hereby published for general information :-

THE CONSTITUTION (NINETY-SECOND AMENDMENT) ACT, 2003.
AN ACT

(7th January, 2004).

further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Ninety-second Amendment) Act, 2003. Short title.

2. In the Eighth Schedule to the Constitution,—

(a) existing entry 3 shall be re-numbered as entry 5, and before entry 5 as so re-numbered, the following entries shall be inserted, namely:—

Amendment
of Eighth
Schedule.

“3. Bodo.

4. Dogri.”;

(b) existing entries 4 to 7 shall respectively be re-numbered as entries 6 to 9;

(c) existing entry 8 shall be re-numbered as entry 11 and before entry 11 as so re-numbered, the following entry shall be inserted, namely:—

“10. Maithili.”;

(d) existing entries 9 to 14 shall respectively be re-numbered as entries 12 to 17;

(e) existing entry 15 shall be re-numbered as entry 19 and before entry 19 as so re-numbered, the following entry shall be inserted, namely:—

“18. Santhali.”;

(f) existing entries 16 to 18 shall respectively be re-numbered as entries 20 to 22.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/14/2004/ACT-104/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (Legislative Department)

New Delhi, the 2nd January, 2004/Pausa 12, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 1st January, 2004 and is hereby published for general information :-

THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT, 2003.

AN ACT

(Act No. 1 of 2004)

(1st January, 2004).

to repeal the Sick Industrial Companies (Special Provisions) Act, 1985.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Sick Industrial Companies (Special Provisions) Repeal Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Appellate Authority" means the Appellate Authority for Industrial and Financial Reconstruction constituted under section 5 of the Sick Industrial Companies (Special Provisions) Act, 1985;

1 of 1986.

(b) "Board" means the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985;

1 of 1986.

(c) words and expressions used herein and not defined but defined in the Sick Industrial Companies (Special Provisions) Act, 1985, shall have the meanings respectively assigned to them in that Act. 1 of 1986.

Repeal of Act 1 of 1986 and dissolution of Appellate Authority and Board.

3. The Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the repealed enactment) is hereby repealed and the Appellate Authority and the Board stand dissolved.

Consequential provisions.

4. On the dissolution of the Appellate Authority and the Board,—

(a) (i) the persons appointed as Chairman and Member of the Appellate Authority or the Board; and

(ii) every other person appointed by the Central Government, Appellate Authority or the Board,

and holding office as such immediately before the commencement of this Act, shall vacate his office and no such Chairman, Member or other person shall be entitled to claim any compensation for premature termination of the term of his office or of any contract of service:

Provided that every officer or employee who has been, immediately before the dissolution of the Appellate Authority or the Board, appointed on deputation basis to the Appellate Authority or the Board, shall stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that every officer or employee who has been, immediately before the dissolution of the Appellate Authority or the Board, employed on regular basis by the Appellate Authority or the Board, shall become, on and from the date of such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Appellate Authority or the Board had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee, employed in the Appellate Authority or the Board, to the Central Government, shall not entitle such officer or employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority: 14 of 1947.

Provided also that where the Appellate Authority or the Board has established a provident fund, superannuation, welfare or other fund for the benefit of the officers and employees employed in the Appellate Authority or the Board, the monies relatable to the officers and employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Appellate Authority or the Board, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed:

(b) any appeal preferred to the Appellate Authority or any reference made to the Board or any inquiry pending before the Board or any other authority or any proceeding of whatever nature pending before the Appellate Authority or the Board immediately before the commencement of this Act shall stand abated:

Provided that a company:—

1 of 1956.

(i) in respect of which such appeal or reference or inquiry stand abated under this clause may make a reference under PART VIA of the Companies Act, 1956 within one hundred and eighty days from the commencement of this Act in accordance with the provisions of the Companies Act, 1956;

1 of 1956.
11 of 2003.

(ii) which had become a sick industrial company as defined in clause (46AA) of section 2 of the Companies Act, 1956, before the commencement of the Companies (Second Amendment) Act, 2002 may make a reference under PART VIA of the Companies Act, 1956 within one hundred and eighty days from the commencement of the Companies (Second Amendment) Act, 2002 or within sixty days of final adoption of accounts after such commencement, whichever is earlier,

1 of 1956.

and reference so made shall be dealt with in accordance with the provisions of the Companies Act, 1956:

1 of 1956.

Provided further that no fee shall be payable for making such reference under PART VIA of the Companies Act, 1956 by a company whose appeal or reference or inquiry stand abated under this clause:

1 of 1956.

Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the repealed enactment shall be deemed to be a scheme sanctioned or under implementation under section 424D of the Companies Act, 1956 and shall be dealt with in accordance with the provisions contained in PART VIA of that Act;

(c) the balance of all monies (including any fee) received by, or advanced to the Appellate Authority or the Board, as the case may be, and not spent by it before the commencement of this Act shall, on the commencement of this Act, stand transferred to, and vest in, the Central Government and shall be utilised for the purposes of clauses (e) and (f);

(d) all property of whatever kind owned by, or vested in, the Appellate Authority or the Board, as the case may be, and not spent by it before the commencement of this Act shall, on the commencement of this Act, stand transferred to, and shall vest in the Central Government;

(e) all liabilities and obligations of whatever kind incurred by the Appellate Authority or the Board and subsisting immediately before the commencement of this Act shall, on and from the commencement of this Act, be deemed to be the liabilities or obligations, as the case may be, of the Central Government; and any proceeding or cause of action, pending or existing immediately before the commencement of this Act by or against the Appellate Authority or the Board in relation to such liability or obligation may, as from the commencement of this Act, be continued or enforced by or against the Central Government;

(f) all monies vested in the Central Government under clause (c) shall, after deducting the amount incurred for discharging the liabilities and obligations referred to in that clause, be refunded by the Central Government to the person to whom such amount is due.

5. (1) The repeal by this Act of the repealed enactment shall not—

Saving.

(a) affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

(b) affect the previous operation of the repealed enactment or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment;

(d) affect any order made by the Board for sanction of the schemes;

(e) affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

(f) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed enactment, affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such privilege, forfeiture or punishment may be imposed as if this Act had not been passed;

(g) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactment;

(h) revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

(2) Save as otherwise provided in section 4 and in sub-section (1) of this section, the mention of particular matters in the said section and sub-section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeal.

10 of 1897.

Power to make rules.

6. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which the monies standing to the credit of provident fund, superannuation, welfare or other fund of officers and employees on their transfer to the Central Government, shall be dealt with by that Government under the fourth proviso to clause (a) of section 4;

(b) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/15/2004/ACT-204/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 2nd January, 2004/Pausa 12, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 1st January, 2004 and is hereby published for general information :-

THE REPRESENTATION OF THE PEOPLE (SECOND AMENDMENT)
ACT, 2003.

AN ACT

(Act No. 2 of 2004)

(1st January, 2004).

*further to amend the Representation of the People Act, 1950 and the Representation
of the People Act, 1951.*

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as
follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Representation of the People (Second
Amendment) Act, 2003.

(2) It shall be deemed to have come into force on the 29th day of October, 2003.

Short title and
commence-
ment.

CHAPTER II

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

Amendment
of section
13AA of Act
43 of 1950.

2. In section 13AA of the Representation of the People Act, 1950, in sub-section (1), the words "other than a Union territory," shall be omitted.

CHAPTER III

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

Amendment
of sections 26
and 78 of Act
43 of 1951.

3. In the Representation of the People Act, 1951,—

(a) in section 26, sub-section (5) shall be omitted;

(b) in section 78, sub-section (2) shall be omitted.

Repeal and
saving.

4. (1) The Representation of the People (Amendment) Ordinance, 2003 is hereby repealed.

Ord. 5 of
2003.

(2) Notwithstanding such repeal, anything done or any action taken under the Representation of the People Act, 1950 and the Representation of the People Act, 1951 as amended by the said Ordinance, shall be deemed to have been done or taken under the said Acts, as amended by this Act.

43 of 1950.
43 of 1951.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/17/2004/ACT-404/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 5th January, 2004/Pausa 15, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 2nd January, 2004 and is hereby published for general information :-

THE PREVENTION OF TERRORISM (AMENDMENT) ACT, 2003. AN ACT

(Act No. 4 of 2004)

(2nd January, 2004).

to amend the Prevention of Terrorism Act, 2002.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Terrorism (Amendment) Act, 2003.

Short title
and
commence-
ment.

(2) It shall be deemed to have come into force on the 27th day of October, 2003.

15 of 2002.

2. In section 60 of the Prevention of Terrorism Act, 2002, after sub-section (3), the following sub-sections shall be inserted, namely:—

Amendment
of section 60.

“(4) Without prejudice to the other provisions of this Act, any Review Committee constituted under sub-section (1) shall, on an application by any aggrieved person, review whether there is a *prima facie* case for proceeding against the accused under this Act and issue directions accordingly.

(5) Any direction issued under sub-section (4),—

(i) by the Review Committee constituted by the Central Government, shall be binding on the Central Government, the State Government and the police officer investigating the offence; and

(ii) by the Review Committee constituted by the State Government, shall be binding on the State Government and the police officer investigating the offence.

(6) Where the reviews under sub-section (4) relating to the same offence under this Act, have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State Government, under sub-section (1), any direction issued by the Review Committee constituted by the Central Government shall prevail.

(7) Where any Review Committee constituted under sub-section (1) is of opinion that there is no *prima facie* case for proceeding against the accused and issues directions under sub-section (4), then, the proceedings pending against the accused shall be deemed to have been withdrawn from the date of such direction.”

Repeal and
saving.

3. (1) The Prevention of Terrorism (Amendment) Ordinance, 2003, is hereby repealed.

Ord.
4 of 2003.

(2) Notwithstanding such repeal, anything done or any action taken under the Prevention of Terrorism Act, 2002, as amended by the said Ordinance, shall be deemed to have been done or taken under the said Act, as amended by this Act.

15 of 2002.

Sd/-

T. K. VISWANATHAN,

Secretary to the Government of India.

By Order and in the name of the Governor of Gujarat.

S. S. PARMAR,

Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/16/2004/ACT-304/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (Legislative Department)

New Delhi, the 2nd January, 2004/Pausa 12, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 1st January, 2004 and is hereby published for general information :-

THE DELIMITATION (AMENDMENT) ACT, 2003. AN ACT

(Act No. 3 of 2004)

(1st January, 2004).

to amend the Delimitation Act, 2002.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Delimitation (Amendment) Act, 2003.
- (2) It shall be deemed to have come into force on the 31st day of October, 2003.

Short title and
commence-
ment.

33 of 2002

2. In section 3 of the Delimitation Act, 2002 (hereinafter referred to as the principal Act), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Amendment
of section 3.

"Explanation.—For the purposes of clause (c), the State Election Commissioner of concerned State,—

(i) in respect of the duties of the Commission relating to a State (other than the States of Meghalaya, Mizoram and Nagaland), means the State Election Commissioner appointed by the Governor of that State under clause (1) of article 243K; and

(ii) in respect of the duties of the Commission relating to the State of Meghalaya or the State of Mizoram or the State of Nagaland, as the case may be, means a person nominated by the Governor of that State for such purposes."

Amendment
of section 4.

3. In section 4 of the principal Act, in sub-section (2), for the figures "1991", the figures "2001" shall be substituted.

Amendment of
section 8.

4. In section 8 of the principal Act,—

(i) in clause (a), for the figures "1991", the figures "2001" shall be substituted;

(ii) in clause (b), for the figures "1991", the figures "2001" shall be substituted.

Amendment
of section 9.

5. In section 9 of the principal Act, in sub-section (1), for the figures "1991", the figures "2001" shall be substituted.

Repeal and
saving.

6. (1) The Delimitation (Amendment) Ordinance, 2003 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Ord.
6 of 2003.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By Order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/18/2004/ACT-504/E :- The following Act of Parliament is republished
for general information :-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)
New Delhi, the 8th January, 2004/Pausa 18, 1925 (Saka)

The following Act of Parliament received the assent of the President on the
7th January, 2004 and is hereby published for general information :-

THE INDIAN COUNCIL OF WORLD AFFAIRS (AMENDMENT) ACT, 2003.

AN ACT

(Act No. 5 of 2004)

(7th January, 2004).

to amend the Indian Council of World Affairs Act, 2001.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as
follows:—

1. This Act may be called the Indian Council of World Affairs (Amendment) Act, 2003. Short title.

29 of 2001.

2. In section 7 of the Indian Council of World Affairs Act, 2001 (hereinafter referred to as the principal Act), in sub-section (2),—

Amendment
of section 7.

(i) the words and figures "which shall not be later than three months from the date of assent by the President of the Indian Council of World Affairs Bill, 2001" shall be omitted and shall be deemed always to have been omitted;

(ii) in clause (b), for the words "as may be nominated by the Council", the words, brackets and figure "to be nominated, in the first instance by the Council constituted under sub-section (1) and thereafter by the Council constituted under this sub-section" shall be substituted;

(iii) for clause (c), the following clause shall be substituted, namely:—

"(c) Director-General, *ex officio* Member-Secretary;"

(iv) in clause (e), for the words "to be nominated by the Council", the words, brackets and figure "to be nominated, in the first instance by the Council constituted under sub-section (1) and thereafter by the Council constituted under this sub-section" shall be substituted;

(v) in clause (f), for the words "to be nominated by the Council", the words, brackets and figure "to be nominated, in the first instance by the Council constituted under sub-section (1) and thereafter by the Council constituted under this sub-section" shall be substituted;

(vi) in clause (g),—

(a) for the words "either media personalities or representatives of organisations", the words "either media personalities or persons from organisations" shall be substituted;

(b) for the word "selected", the word "nominated" shall be substituted;

(vii) in clause (h), for the words "who are representatives of Business or", the words "from Business or" shall be substituted;

(viii) in clause (i), the words "to be nominated by the Chairperson of the Governing Body" shall be omitted.

Amendment
of section 15.

3. In section 15 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

"(1) There shall be a Director-General of the Council who shall, before a Council is constituted under sub-section (2) of section 7, be appointed by the Council constituted under sub-section (1) of that section and thereafter during the tenure of a Council constituted under sub-section (2) of section 7, by that Council.

(1A) Every appointment of the Director-General under sub-section (1) shall be made from a panel of at least two names recommended by the Government of India in the Ministry of External Affairs.

(1B) The Director-General shall be the chief executive officer of the Council.

(1C) The Director-General shall be at least equivalent to the rank of Additional Secretary to the Government of India and shall have a tenure not exceeding three years.

(2) The Director-General shall act as *ex officio* Member-Secretary to the Council, its Governing Body and other bodies and Committees thereof."

Insertion of
new section
23A.

4. After section 23 of the principal Act, the following section shall be inserted, namely:—

Transitory
provision.

"23A. For the removal of doubts, it is hereby declared that till the constitution of a Council in terms of sub-section (2) of section 7, the Council referred to in sub-section (1) thereof shall be deemed to have been a Council for the purposes of this Act notwithstanding anything contrary contained in any provision of this Act:

Provided that anything done or any action taken or any proceeding initiated under any provision of this Act or rules or regulations made thereunder shall not be called in question before any court or other authority because of non-existence of a Council in terms of sub-section (2) of section 7.”

5. After section 28 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 28A.

“28A. (1) If any difficulty arises in giving effect to the provisions of the Indian Council of World Affairs (Amendment) Act, 2003, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of the Indian Council of World Affairs (Amendment) Act, 2003.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.”

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/19/2004/ACT-604/E :- The following Act of Parliament is republished
for general information :-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 8th January, 2004/Pausa 18, 1925 (Saka)

The following Act of Parliament received the assent of the President on the
7th January, 2004 and is hereby published for general information :-

THE CITIZENSHIP (AMENDMENT) ACT, 2003.

AN ACT

(Act No. 6 of 2004)

(7th January, 2004).

further to amend the Citizenship Act, 1955.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as
follows:—

1. (1) This Act may be called the Citizenship (Amendment) Act, 2003,

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification
in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and
any reference in any such provision to the commencement of this Act shall be construed as
a reference to the commencement of that provision.

57 of 1955.

2. In section 2 of the Citizenship Act, 1955 (hereinafter referred to as the principal Act),
in sub-section (1),—

Amendment
of section 2.

(i) for clauses (b) and (c) and the proviso to clause (c), the following clause shall
be substituted, namely:—

“(b) “illegal migrant” means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;”;

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ee) “overseas citizen of India” means a person who—

(i) is of Indian origin being a citizen of a specified country, or

(ii) was a citizen of India immediately before becoming a citizen of a specified country,

and is registered as an overseas citizen of India by the Central Government under sub-section (1) of section 7A;”;

(iii) after clause (g), the following clause shall be inserted, namely:—

“(gg) “specified country” means a country specified in the Fourth Schedule:

Provided that the Central Government may, by notification in the Official Gazette, amend the said Schedule by way of addition or omission of any entry therein:

Provided further that every notification issued under this clause shall, as soon as may be, after it is made, be laid before each House of Parliament;”.

3. For section 3 of the principal Act, the following section shall be substituted, namely:—

“3. (1) Except as provided in sub-section (2), every person born in India—

(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where—

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth,

shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—

(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.”.

4. In section 4 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) A person born outside India shall be a citizen of India by descent,—

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

Substitution
of new section
for section 3.

Citizenship by
birth.

Amendment
of section 4.

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,—

(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, whichever is later; or

(ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.

5. In section 5 of the principal Act,—

(a) for sub-section (1), the following shall be substituted, namely:—

“(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

Amendment
of section 5.

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for two years before making an application for registration.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.”

(b) after sub-section (5), the following sub-section shall be inserted, namely:—

“(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.”

Amendment
of section 6.

6. In section 6 of the principal Act, in sub-section (1), for the words “who is not a citizen of a country specified in the First Schedule”, the words “not being an illegal migrant” shall be substituted.

Insertion of
heading and
new sections
7A, 7B, 7C
and 7D.

7. After section 7 of the principal Act, the following heading and sections shall be inserted, namely:—

‘OVERSEAS CITIZENSHIP

7A. (1) The Central Government may, subject to such conditions and restrictions including the condition of reciprocity as may be prescribed, on an application made in this behalf, register any person as an overseas citizen of India if—

(a) that person is of Indian origin of full age and capacity who is a citizen of a specified country; or

(b) that person is of full age and capacity who has obtained the citizenship of a specified country on or after the commencement of the Citizenship (Amendment) Act, 2003 and who was a citizen of India immediately before such commencement; or

(c) that person is a minor of a person mentioned in clause (a) or clause (b).

(2) The person registered as an overseas citizen of India under sub-section (1) shall be an overseas citizen of India as from the date on which he is so registered.

(3) No person who has been deprived of his Indian citizenship under this Act shall be registered as an overseas citizen of India under sub-section (1) except by an order of the Central Government.

Registration
of overseas
citizens.

Explanation.—For the purposes of this section and sections 7B, 7C and 7D, the expression “person of Indian origin” shall mean a citizen of another country who—

(i) was eligible to become a citizen of India at the time of the commencement of the Constitution;

(ii) belonged to a territory that became part of India after the 15th day of August, 1947; and

(iii) the children and grand-children of a person covered under clauses (i) and (ii), but does not include a person who is or had been at any time a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify.

7B. (1) Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India shall be entitled to such rights [other than the rights specified under sub-section (2)] as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Conferment of rights on overseas citizens of India.

(2) An overseas citizen of India shall not be entitled to the rights conferred on a citizen of India—

(a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;

(b) under article 58 of the Constitution for election as President;

(c) under article 66 of the Constitution for election of Vice-President;

(d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;

(e) under article 217 of the Constitution for appointment as a Judge of the High Court;

(f) under section 16 of the Representation of the People Act, 1950 in regard to registration as a voter;

(g) under sections 3 and 4 of the Representation of the People Act, 1951 with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;

(h) under sections 5, 5A and 6 of the Representation of the People Act, 1951 with regard to the eligibility for being a member of the Legislative Assembly or a Legislative Council, as the case may be, of a State;

(i) for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may by special order in that behalf specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

7C. (1) If any overseas citizen of India of full age and capacity makes in the prescribed manner a declaration renouncing his overseas citizenship of India, the declaration shall be registered by the Central Government, and upon such registration, that person shall cease to be an overseas citizen of India.

Renunciation of overseas citizenship.

(2) Where a person ceases to be an overseas citizen of India under sub-section (1), every minor child of that person registered as an overseas citizen of India, shall thereupon cease to be an overseas citizen of India.

7D. The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A if it is satisfied that—

(a) the registration as an overseas citizen of India was obtained by means of fraud, false representation or the concealment of any material fact; or

Cancellation of registration as overseas citizen of India.

43 of 1950.

43 of 1951.

43 of 1951.

(b) the overseas citizen of India has shown disaffection towards the Constitution of India as by law established; or

(c) the overseas citizen of India has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) the overseas citizen of India has, within five years after registration under sub-section (1) of section 7A has been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public.

Amendment
of section 8.

8. In section 8 of the principal Act,—

(a) in sub-section (1), the words “who is also a citizen or national of another country” shall be omitted;

(b) in the proviso to sub-section (2), after the word “declaration”, the words “in the prescribed form and manner” shall be inserted;

(c) sub-section (3) shall be omitted.

Amendment
of section 9.

9. In section 9 of the principal Act, in sub-section (2), for the word “person”, the words “citizen of India” shall be substituted.

Omission of
sections 11
and 12.

10. Sections 11 and 12 of the principal Act shall be omitted.

Amendment
of section 14.

11. In section 14 of the principal Act, for the words and figures “sections 5 and 6”, the words, figures and letter “sections 5, 6 and 7A” shall be substituted.

Insertion of
new section
14A.

12. After section 14 of the principal Act, the following section shall be inserted, namely:—

Issue of
national
identity cards.

“14A. (1) The Central Government may compulsorily register every citizen of India and issue national identity card to him.

(2) The Central Government may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2003, the Registrar General, India, appointed under sub-section (1) of section 3 of the Registration of Births and Deaths Act, 1969 shall act as the National Registration Authority and he shall function as the Registrar General of Citizen Registration.

18 of 1969.

(4) The Central Government may appoint such other officers and staff as may be required to assist the Registrar General of Citizen Registration in discharging his functions and responsibilities.

(5) The procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed.

Insertion of
new section
15A.

13. After section 15 of the principal Act, the following section shall be inserted, namely:—

Review.

“15A. (1) Any person aggrieved by an order made by the Central Government may, within thirty days from the date of such order, make an application for review of such order:

Provided that the Central Government may entertain an application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided further that an application for a review of an order passed in terms of the provisions of section 14A shall be disposed of in the manner provided for in the procedure as may be laid down under clause (ia) of sub-section (2) of section 18.

(2) On receipt of an application under sub-section (1), the Central Government shall, make such order as it deems fit, and the decision of the Central Government on such review shall be final.”

14. In section 17 of the principal Act,—

Amendment
of section 17.

(a) for the words “six months”, the words “five years” shall be substituted;

(b) for the words “with fine”, the words “with fine which may extend to fifty thousand rupees” shall be substituted.

15. In section 18 of the principal Act,—

Amendment
of section 18.

(i) in sub-section (2),—

(a) after clause (a), the following clause shall be inserted, namely:—

“(aa) the form and manner in which a declaration under sub-section (1) of section 4 shall be made;”;

(b) after clause (i), the following clause shall be inserted, namely:—

“(ia) the procedure to be followed in compulsory registration of the citizens of India under sub-section (5) of section 14A;”;

(ii) in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that any rule made in respect of a matter specified in clause (ia) of sub-section (2) may provide that a breach thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.”.

16. The First Schedule to the principal Act shall be omitted.

Omission of
First Schedule.

17. For the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

Substitution
of Second
Schedule by a
new Schedule.

“THE SECOND SCHEDULE

[See sections 5(2) and 6(2)]

OATH OF ALLEGIANCE

I, A/B.....do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfil my duties as a citizen of India.”.

18. In the Third Schedule to the principal Act,—

Amendment
of Third
Schedule.

(a) in the opening portion, the words “who is not a citizen of a country specified in the First Schedule” shall be omitted;

(b) in clause (b), for the words “he has renounced the citizenship of that country in accordance with the law therein in force in that behalf and has notified such renunciation to the Central Government”, the words “he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted” shall be substituted;

(c) in clause (d),—

(i) for the words “twelve years”, the words “fourteen years” shall be substituted;

(ii) for the words “nine years”, the words “eleven years” shall be substituted;

(d) in the proviso, in clause (ii), for the words “thirteen years”, the words “fifteen years” shall be substituted.

Insertion of
new Fourth
Schedule.

19. After the Third Schedule to the principal Act, the following Schedule shall be inserted, namely:—

“THE FOURTH SCHEDULE
[See section 2(1)(gg)]

1. Australia.
2. Canada.
3. Finland.
4. France.
5. Greece.
6. Ireland.
7. Israel.
8. Italy.
9. Netherlands.
10. New Zealand.
11. Portugal.
12. Republic of Cyprus.
13. Sweden.
14. Switzerland.
15. United Kingdom.
16. United States of America.”.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd May, 2004.

No. RPB/22/2004/ACT-904/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 12th January, 2004/Pausa 22, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 9th January, 2004 and is hereby published for general information :-

THE SALARY, ALLOWANCES AND PENSION OF MEMBERS OF
PARLIAMENT (AMENDMENT) ACT, 2003.

AN ACT

(Act No. 9 of 2004)

(9th January, 2004).

further to amend the Salary, Allowances and Pension of Members of Parliament Act, 1954.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2003. Short title.

30 of 1954. 2. In section 2 of the Salary, Allowances and Pension of Members of Parliament Act, 1954 (hereinafter referred to as the principal Act), after clause (a), the following clause shall be inserted, namely:— Amendment of section 2.

‘(aa) “dependent” means any of the following relatives of a deceased member, namely:—

(i) a minor legitimate son, and an unmarried legitimate daughter and a widowed mother; or

(ii) if wholly dependent on the earnings of the member at the time of his death, a son or a daughter who has attained the age of eighteen years and who is infirm; or

(iii) if wholly or in part dependent on the earnings of the member at the time of his death,—

(a) the parent; or

(b) a minor brother or an unmarried sister; or

(c) a widowed daughter-in-law; or

(d) a minor child of a pre-deceased son; or

(e) a minor child of a pre-deceased daughter where no parent of the child is alive; or

(f) the paternal grandparent if no parent of the member is alive; or

(g) such other person as may be specified by the rules made under section 9 by the Joint Committee;.

Amendment
of section 4.

3. In section 4 of the principal Act,—

(a) in sub-section (2), after the second proviso, the following provisos shall be inserted, namely:—

“Provided also that in case a member resides within a distance of three hundred kilometers from Delhi, he or his spouse, for the journey performed by him by road, may draw the mileage allowance referred to in sub-clause (ii) of clause (c) of sub-section (1) in place of the travelling allowance which would have been admissible to him had he performed such journey by rail or by road, as the case may be:

Provided also that in case a member resides in the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim or Tripura, he or his spouse may draw the mileage allowance referred to in sub-clause (ii) of clause (c) of sub-section (1) for journey performed by him by road from his residence in any of the said States to the nearest airport.”;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) There shall be paid to a person—

(a) who has been elected in a biennial election as a member of the Council of States but the notification in the Official Gazette notifying his name under section 71 of the Representation of the People Act, 1951 43 of 1951. has not been published in the Official Gazette; or

(b) who has been elected as a member of the House of the People in a general election held for the purpose of constituting a new House of the People but the notification in the Official Gazette notifying his name under section 73 of the Representation of the People Act, 1951 has not 43 of 1951. been published in the Official Gazette; or

(c) who has been elected in a bye-election as a member of either House of Parliament or nominated as a member to either House of Parliament,

an amount equivalent to the fare in respect of every journey performed by him for coming to Delhi before the publication of notification referred to in clause (a) or clause (b), or election or nomination under clause (c):

Provided that in case the journey is performed by rail or steamer or road, he shall be entitled to the reimbursement of the fare or road mileage to which a member is entitled:

Provided further that in case he performs the journey by air, such journey shall be included for the purpose of counting thirty-two journeys referred to in the first proviso to sub-section (2) of section 5."

4. In section 5 of the principal Act, in sub-section (2), after the second proviso, the following proviso shall be inserted, namely:— Amendment of section 5.

"Provided also that the spouse or companion of a member, as the case may be, may alone perform maximum eight journeys by air from any place of India to the place in India for the purpose of visiting such member and such journey shall be included for the purpose of counting thirty-two journeys referred to in the first proviso to sub-section (2)."

5. After section 5 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 5A.

'5A. Where a person referred to in sub-section (4) of section 4 comes to Delhi, he shall be entitled to such transit accommodation for such period as may be specified by the rules made under clause (ccc) of sub-section (3) of section 9 by the Joint Committee." Transit accommodation.

6. In section 8A of the principal Act, for sub-sections (I) and (IA), the following sub-sections shall be substituted, namely:— Amendment of section 8A.

'(I) With effect from the commencement of the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2003, there shall be paid a pension of three thousand rupees per mensem to every person who has served for any period, as a member of the Provisional Parliament or either House of Parliament:

Provided that where any person has served as a member of the Provisional Parliament or either House of Parliament for a period exceeding five years, there shall be paid to him an additional pension of six hundred rupees per mensem for every year in excess of five years.

Explanation.—For the purpose of this sub-section, "Provisional Parliament" shall include the body which functioned as the Constituent Assembly of the Dominion of India immediately before the commencement of the Constitution.

(IA) With effect from the commencement of the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2003, there shall be paid a pension of rupees one thousand and five hundred per mensem, to the spouse, if any, or dependent of any member who dies during his term of office as such member, for a period of five years from the date of his death.

Explanation.—For the removal of doubts, it is hereby declared that the spouse or the dependent of the member referred to in this sub-section shall be entitled to receive the family pension even if the member has died on or before the commencement of the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2003.'

7. For section 8AA of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 8AA.

"8AA. Every person who is not a sitting Member but has served for any period as a Member of either House of Parliament shall be,— Travel facilities to ex-Members.

(a) with effect from the 18th day of January, 1999, entitled along with a companion to travel in any train by any railway in India in air-conditioned two-tier class; or

(b) entitled to travel alone in any train by any railway in India in air-conditioned first class,

without payment of any charges on the basis of an authorisation issued for this purpose by the Secretariat of either House of Parliament as the case may be."

Insertion of
new section
8AB.

Rounding off
period of
pension.

Amendment
of section 9.

8. After section 8AA of the principal Act, the following section shall be inserted, namely:—

"8AB. Where the period for which the pension is payable under this Act contains a part of a year, then, if such part is nine months or more, it shall be reckoned equivalent to complete one year for the purpose of payment of additional pension under sub-section (1) of section 8A and if such part is less than nine months, it shall be ignored."

9. In section 9 of the principal Act, in sub-section (3),—

(i) after clause (a), the following clause shall be inserted, namely:—

"(aa) the person who may be specified as dependent under sub-clause (g) of clause (aa) of section 2;"

(ii) after clause (cc), the following clause shall be inserted, namely:—

"(ccc) the transit accommodation and the period for which such accommodation may be provided under section 5A;"

(iii) after clause (ff), the following clause shall be inserted, namely:—

"(fff) to provide for carry forward of unutilised free telephone calls pertaining to any year beginning on or after the 1st day of April, 2002 to any subsequent year;"

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 24th May, 2004.

No. RP/27/2004/ACT-304/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 12th February, 2004/Magha 23, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 12th February, 2004 and is hereby published for general information :-

(Act No. 13 of 2004) **AN ACT** (12th February, 2004).
to continue for the financial year 2004-05 the existing rates of income-tax and the levy of the National Calamity Contingent duty and the National Calamity Contingent Duty of Customs on certain items.

Be it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance Act, 2004.

(2) Section 2 shall come into force on the 1st day of April, 2004 and section 3 shall come into force at once.

Short title and commencement.

CHAPTER II

RATES OF INCOME-TAX

32 of 2003.

2. The provisions of section 2 of, and the First Schedule to, the Finance Act, 2003, shall apply in relation to income-tax for the assessment year or, as the case may be, the financial year commencing on the 1st day of April, 2004, as they apply in relation to income-tax for the assessment year or, as the case may be, the financial year commencing on the 1st day of April, 2003, with the following modifications, namely:—

(a) in section 2,—

(i) in sub-section (1), for the figures "2003", the figures "2004" shall be substituted;

(ii) in sub-section (3).—

(A) the second proviso shall be omitted;

(B) for the third proviso, the following proviso shall be substituted, namely:—

"Provided further that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115E and 115JB of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased by a surcharge for purposes of the Union, calculated,—

(a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such income-tax where the total income exceeds eight hundred and fifty thousand rupees;

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such income-tax;

(c) in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such income-tax.";

(iii) in sub-section (6), in clause (a), for the words "exceeds rupees", the word "exceeds" shall be substituted;

(iv) in sub-section (8), in clause (a), for the words "exceeds rupees", the word "exceeds" shall be substituted;

(v) in sub-section (11), in clause (a), for the figures "2003", the figures "2004" shall be substituted;

(b) in the First Schedule,—

(i) for PART I, the following PART shall be substituted, namely:—

"PART I

INCOME-TAX

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 50,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000 | 10 per cent. of the amount by which the total income exceeds Rs. 50,000; |
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 60,000; |
| (4) where the total income exceeds Rs. 1,50,000 | Rs. 19,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall,—

(i) in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding eight hundred and fifty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax;

(ii) in the case of every person, other than those mentioned in item (i), be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax;

Provided that in case of persons mentioned in item (i) above having a total income exceeding eight hundred and fifty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of eight hundred and fifty thousand rupees by more than the amount of income that exceeds eight hundred and fifty thousand rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income 35 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income 30 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

- I. In the case of a domestic company 35 per cent. of the total income;
- II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

50 per cent.;

(ii) on the balance, if any, of the total income 40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.":

(ii) in Part IV, in Rule 8,—

(A) for sub-rules (1) and (2), the following sub-rules shall be substituted, namely:—

"(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2004, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April 2002 or the 1st day of April, 2003,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April,

1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2002 or the 1st day of April, 2003,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2003,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2003,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2004.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2005, or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to

the assessment years commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004, is a loss, then, for the purposes of sub-section (10) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2003 or the 1st day of April, 2004,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April,

2003, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2004,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2004,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2005.";

(B) for sub-rule (4), the following sub-rule shall be substituted, namely:—

"(4) Notwithstanding anything contained in this Rule, no loss which has not been determined by the Assessing Officer under the provisions of these Rules or the Rules contained in Part IV of the First Schedule to the Finance (No. 2) Act, 1996 (33 of 1996), or of the First Schedule to the Finance Act, 1997 (26 of 1997), or of the First Schedule to the Finance (No. 2) Act, 1998 (21 of 1998), or of the First Schedule to the Finance Act, 1999 (27 of 1999), or of the First Schedule to the Finance Act, 2000 (10 of 2000), or of the First Schedule to the Finance Act, 2001 (14 of 2001), or of the First Schedule to the Finance Act, 2002 (20 of 2002), or of the First Schedule to the Finance Act, 2003 (32 of 2003), shall be set off under sub-rule (1) or, as the case may be, sub-rule (2)."

CHAPTER III

INDIRECT TAXES

3. In section 169 of the Finance Act, 2003, for the words, figures and letters "the 1st day of March, 2004", the words, figures and letters "the 1st day of April, 2005" shall be substituted.

Amendment of
section 169 of
Act 32 of 2003.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By Order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 24th May, 2004.

No. RPB/30/2004/Act-1604/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 23rd February, 2004/Phalgun 4, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 20th February, 2004 and is hereby published for general information :-

THE FOREIGNERS (AMENDMENT) ACT, 2004.

AN ACT

(Act No. 16 of 2004)

(20th January, 2004).

further to amend the Foreigners Act, 1946.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

1. This Act may be called the Foreigners (Amendment) Act, 2004.

Short title.

Substitution of new sections for section 14.

2. For section 14 of the Foreigners Act, 1946, the following sections shall be substituted, namely:—

Penalty for contravention of provisions of the Act, etc.

14. Whoever—

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

Explanation.— For the purposes of this section, the expression “visa” shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (entry into India) Act, 1920.

34 of 1920.

Penalty for entry in restricted areas, etc.

14A. Whoever—

(a) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a permit from the authority, notified by the Central Government in the Official Gazette, for this purpose or remains in such area beyond the period specified in such permit for his stay; or

(b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof,

shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

Penalty for using forged passport.

14B. Whoever knowingly uses a forged passport for entering into India or remains therein without the authority of law for the time being in force shall be punishable with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.

Penalty for abetment.

14C. Whoever abets any offence punishable under section 14 or section 14A or section 14B shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Explanation.—For the purposes of this section,—

(i) an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the offence;

(ii) the expression “abetment” shall have the same meaning as assigned to it under section 107 of the Indian Penal Code.’.

45 of 1860.

Sd/-

B. A. AGRAWAL,

Addl. Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,

Secretary to Government.

Government Central Press, Gandhinagar.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 24th May, 2004.

No. RPB/23/2004/ACT-1704/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 23rd February, 2004/Falghuna, 4, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 20th February, 2004 and is hereby published for general information :-

THE BRITISH STATUTES (REPEAL) ACT, 2004.

AN ACT

(20th February, 2004).

(Act No. 17 of 2004)

to repeal the British Law Ascertainment Act, 1859, the Foreign Law Ascertainment Act, 1861, the Colonial Probates Act, 1892, in so far as they apply to India, and the India (Consequential Provision) Act, 1949.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

1. This Act may be called the British Statutes (Repeal) Act, 2004.

Short title

Definition.

2. In this Act, "British Statutes" means the British Law Ascertainment Act, 1859, the Foreign Law Ascertainment Act, 1861, the Colonial Probates Act, 1892, in so far as they apply to India, and the India (Consequential Provision) Act, 1949.

22&23 Vict. C.63
24&25 Vict.C.11
55&56 Vict.C.6
12,13 & 14
Geor. VI C.92.

Repeal.

3. The British Statutes are hereby repealed.

Sd/-

B. A. AGRAWAL,

Addl. Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,

Secretary to Government.

Government Central Press, Gandhinagar.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar. 24th May, 2004.

No. RPB/1/2004/ACT-5003/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 23rd December, 2003/Pausa 2, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 23rd December, 2003 and is hereby published for general information :-

THE MARRIAGE LAWS (AMENDMENT) ACT, 2003.

AN ACT

(23rd December, 2003).

(Act No. 50 of 2003)

further to amend the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Marriage Laws (Amendment) Act, 2003.

Short title.

CHAPTER II

AMENDMENTS TO THE SPECIAL MARRIAGE ACT, 1954

43 of 1954.

2. In the Special Marriage Act, 1954 (hereinafter referred to as the Special Marriage Act), in section 31, in sub-section (1), after clause (iii), the following clause shall be inserted, namely:—

Amendment of section 31.

“(iii) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or”.

Amendment
of section 39.

3. In section 39 of the Special Marriage Act, in sub-section (4), for the words "period of thirty days", the words "period of ninety days" shall be substituted.

CHAPTER III

AMENDMENTS TO THE HINDU MARRIAGE ACT, 1955

Amendment
of section 19.

4. In the Hindu Marriage Act, 1955 (hereinafter referred to as the Hindu Marriage Act), in section 19, in sub-section (1), after clause (iii), the following clause shall be inserted, namely:—

25 of 1955.

"(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or".

Amendment
of section 28.

5. In section 28 of the Hindu Marriage Act, in sub-section (4), for the words "period of thirty days", the words "period of ninety days" shall be substituted.

CHAPTER IV

MISCELLANEOUS

Transitory
provision.

6. All decrees and orders made by the court in any proceedings under the Special Marriage Act or the Hindu Marriage Act shall be governed under the provisions contained in section 3 or section 5, as the case may be, as if this Act came into operation at the time of the institution of the suit:

Provided that nothing in this section shall apply to a decree or order in which the time for appealing has expired under the Special Marriage Act or the Hindu Marriage Act at the commencement of this Act.

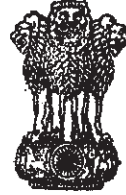
Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By Order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 24th May, 2004.

No. RPB/2/2004/Act-5703/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 23rd December, 2003/Pausa 2, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 23rd December, 2003 and is hereby published for general information :-

THE RAILWAYS (SECOND AMENDMENT) ACT, 2003.
AN ACT

(Act No. 51 of 2003)

(23rd December, 2003).

further to amend the Railways Act, 1989.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Railways (Second Amendment) Act, 2003.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

24 of 1989.

2. In section 2 of the Railways Act, 1989 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(a) after clause (26), the following clause shall be inserted, namely:—

“(26A) “officer authorised” means an officer authorised by the Central Government under sub-section (2) of section 179;”

(b) in clause (34), after the words “service of a railway”, the following shall be inserted, namely:—

23 of 1957.

“including member of the Railway Protection Force appointed under clause (c) of sub-section (1) of section 2 of the Railway Protection Force Act, 1957”.

Substitution
of new
section for
section 179.
Arrest for
offences
under certain
sections.

3. For section 179 of the principal Act, the following section shall be substituted, namely:—

“179. (1) If any person commits any offence mentioned in sections 150 to 152, he may be arrested without warrant or other written authority by any railway servant or police officer not below the rank of a head constable.

(2) If any person commits any offence mentioned in sections 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 to 176, he may be arrested, without warrant or other written authority, by the officer authorised by a notified order of the Central Government.

(3) The railway servant or the police officer or the officer authorised, as the case may be, may call to his aid any other person to effect the arrest under sub-section (1) or sub-section (2), as the case may be.

(4) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.”

Amendment
of section
180.

4. In section 180 of the principal Act,—

(a) in sub-section (1),—

(i) for the word and figures “section 179”, the words, brackets and figures “sub-section (2) of section 179” shall be substituted;

(ii) for the words “any railway servant authorised in this behalf or any police officer not below the rank of a head constable”, the words “the officer authorised” shall be substituted;

(b) in sub-section (2), for the words “The railway servant or the police officer”, the words “The officer authorised” shall be substituted.

Insertion of
new sections
180A to 180G.

5. After section 180 of the principal Act, the following sections shall be inserted, namely:—

“180A. For ascertaining facts and circumstances of a case, the officer authorised may make an inquiry into the commission of an offence mentioned in sub-section (2) of section 179 and may file a complaint in the competent court if the offence is found to have been committed.

Inquiry by
officer
authorised to
ascertain
commission
of offence.

180B. While making an inquiry, the officer authorised shall have power to,—

(i) summon and enforce the attendance of any person and record his statement;

(ii) require the discovery and production of any document;

(iii) requisition any public record or copy thereof from any office, authority or person;

(iv) enter and search any premises or person and seize any property or document which may be relevant to the subject-matter of the inquiry.

Powers of
officer
authorised to
inquire.

180C. Every person arrested for an offence punishable under sub-section (2) of section 179 shall, if the arrest was made by a person other than the officer authorised, be forwarded, without delay, to such officer.

Disposal of
persons
arrested.

180D. (1) When any person is arrested by the officer authorised for an offence punishable under this Act, such officer shall proceed to inquire into the charge against such person.

Inquiry how
to be made
against
arrested
person.

2 of 1974.

(2) For this purpose, the officer authorised may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to the provisions of the Code of Criminal Procedure, 1973, when investigating a cognizable case:

Provided that—

(a) if the officer authorised is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer authorised that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer authorised may direct, to appear, if and when so required, before the Magistrate having jurisdiction.

2 of 1974.

180E. All searches, seizures and arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating respectively to searches and arrests made under that Code.

Search, seizure and arrest how to be made.

180F. No court shall take cognizance of an offence mentioned in sub-section (2) of section 179 except on a complaint made by the officer authorised.

Cognizance by Court on a complaint made by officer authorised.

180G. Whoever intentionally insults or causes any interruption in the inquiry proceedings or deliberately makes a false statement before the inquiring officer shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Punishment for certain offences in relation to inquiry.

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,
Sachivalaya, Gandhinagar, 24th May, 2004.

No. RPB/4/2004/Act-5303/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 31st December, 2003/Pausa 10, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 2003 and is hereby published for general information :-

THE INDUSTRIAL DEVELOPMENT BANK (TRANSFER OF
UNDERTAKING AND REPEAL) ACT, 2003

AN ACT

(Act No. 53 of 2003)

(30th December, 2003).

to provide for the transfer and vesting of the undertaking of the Industrial Development Bank of India to, and in, the Company to be formed and registered as a Company under the Companies Act, 1956 to carry on banking business and for matters connected therewith or incidental thereto and also to repeal the Industrial Development Bank of India Act, 1964.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appointed day" means such date as the Central Government may, by notification, appoint under section 3;

(b) "Company" means the Industrial Development Bank of India Limited to be formed and registered under the Companies Act, 1956;

1 of 1956.

GUJARAT GOVERNMENT GAZETTE, EX. 24-5-2004 [PART VI]

(c) "Development Bank" means the Industrial Development Bank of India established under sub-section (1) of section 3 of the Industrial Development Bank of India Act, 1964;

18 of 1964.

(d) "notification" means a notification published in the Official Gazette;

(e) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.

2 of 1934.

CHAPTER II

TRANSFER AND VESTING OF THE UNDERTAKING OF DEVELOPMENT BANK IN COMPANY

Undertaking
of Develop-
ment Bank to
vest in
Company.

3. (1) On such date as the Central Government may, by notification, appoint, there shall be transferred to, and vest in, the Company, the undertaking of Development Bank.

(2) Notwithstanding anything contained in the Banking Regulation Act, 1949, the Company referred to in sub-section (1) shall be deemed to be a banking company within the meaning of clause (c) of section 5 of the Banking Regulation Act, 1949 and as such shall carry on banking business in accordance with the provisions of that Act, in addition to the business which may be carried on and transacted by the Development Bank:

10 of 1949.

Provided that such Company shall not be required to—

(a) obtain licence under section 22 of the Banking Regulation Act, 1949;

10 of 1949.

(b) maintain for a period of five years from the appointed day the percentage of assets required to be maintained under section 24 of the said Act.

(3) The provisions of the Banking Regulation Act, 1949 shall, as far as may be, to the extent they are not repugnant to any provision of this Act, apply to such Company.

10 of 1949.

(4) Notwithstanding anything contained in the Banking Regulation Act, 1949, the Central Government may, in consultation with the Reserve Bank of India, by notification, direct that any of the provisions of that Act specified in the notification —

10 of 1949.

(a) shall not apply to the Company; or

(b) shall apply to the Company, only with such exceptions, modifications and the adaptations as may be specified in the notification.

(5) A copy of every notification proposed to be issued under sub-section (4), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

General effect
of transfer and
vesting of
undertaking.

4. (1) The Central Government, being the shareholder of the Development Bank and every other shareholder of the Development Bank immediately before the appointed day shall be deemed to be registered on and from the appointed day as a shareholder of the Company to the extent of the face value of the shares held by such shareholder.

(2) The undertaking of the Development Bank which is transferred to, and which vest in, the Company under section 3 shall be deemed to include all business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concern, loans, advances and guarantees given to any person or industrial concern, tenancies, leases and book debts and all other

rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession or power of the Development Bank in relation to its undertaking, within or without India, all books of account, registers, records and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind within or without India then subsisting of the Development Bank in relation to its respective undertaking.

(3) All contracts, deeds, bonds, guarantees, powers of attorney, other instruments and working arrangements subsisting immediately before the appointed day and affecting the Development Bank shall cease to have effect or to be enforceable against the Development Bank and shall be of as full force and effect against or in favour of the Company in which the undertaking of the Development Bank has vested by virtue of this Act and enforceable as fully and effectually as if instead of the Development Bank, the Company had been named therein or had been a party thereto.

(4) Any proceeding or cause of action pending or existing immediately before the appointed day by or against the Development Bank in relation to its undertaking may, as from the appointed day, be continued and enforced by or against the Company in which the undertaking of the Development Bank has vested by virtue of this Act as it might have been enforced by or against the Development Bank if this Act had not been enacted and shall cease to be enforceable by or against the Development Bank.

5. (1) Every officer or other employee of the Development Bank (except a director of the Board or the chairman and managing director or any whole-time director) serving in the employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in the Company by virtue of this Act, become, as from the appointed day, an officer or, as the case may be, other employee of the Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave fare concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the Development Bank if its undertaking had not vested in the Company and shall continue to do so as an officer or, as the case may be, other employee of the Company or until the expiry of a period of six months from the appointed day, if such officer or other employee opts not to continue to be the officer or other employee of the Company within such period.

Provisions in respect of officers and other employees of Development Bank.

(2) Where an officer or other employee of the Development Bank opts under subsection (1) not to be in employment or service of the company, such officer or other employee shall be deemed to have resigned.

14 of 1947.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Development Bank to the Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(4) The officers and other employees who have retired before the appointed day from the service of the Development Bank and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the Company.

(5) The trust of the provident fund or the gratuity fund of the Development Bank and any other bodies created for the welfare of officers or employees would continue to discharge their functions in the Company as was being done hitherto in the Development Bank and any tax exemption granted to the provident fund or the gratuity fund or pension fund would continue to be applied to the Company.

1 of 1956.

(6) Notwithstanding anything contained in this Act or in the Companies Act, 1956, or in any other law for the time being in force or in the regulations of the Development Bank, no director of the Board, chairman and managing director or any whole-time director or any

other person entitled to manage the whole or substantial part of the business and affairs of the Development Bank shall be entitled to any compensation against the Development Bank or the Company for the loss of office or for the premature termination of any contract of management entered into by him with the Development Bank.

CHAPTER III

MISCELLANEOUS

Concession, etc., to be deemed to have been granted to Company.

6. With effect from the appointed day, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Development Bank, in connection with the affairs and business of the Development Bank under any law for the time being in force shall be deemed to have been granted to the Company.

Tax exemption or benefit to continue to have effect.

7. (1) Where any exemption from, or any assessment with respect to, any tax has been granted or made or any benefit by way of set off or carry forward of any unabsorbed depreciation or investment allowance or other allowance or loss has been extended or is available to the Development Bank under the Income-tax Act, 1961, such exemption, assessment or benefit shall continue to have effect in relation to the Company.

43 of 1961.

(2) Where any payment made by the Development Bank is exempted from deduction of tax at source under any provision of the Income-tax Act, 1961, such exemption will continue to be available as if the provisions of the said Act made applicable to the Development Bank were operative in relation to the Company.

43 of 1961.

(3) The transfer and vesting of the undertaking of the Development Bank or any part thereof in terms of section 3 shall not be construed as a transfer within the meaning of the Income-tax Act, 1961 or any other law for the time being in force.

43 of 1961.

Guarantee to be operative.

8. Any guarantee given for or in favour of the Development Bank with respect to any loan, lease, finance or other assistance shall continue to be operative in relation to the Company.

Shares, bonds and debentures to be deemed to be approved securities.

9. Notwithstanding anything contained in any other law for the time being in force, the shares, bonds and debentures of the Company shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882 and the Insurance Act, 1938.

2 of 1882.
4 of 1938.

Act to have overriding effect.

10. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Application of other laws not barred.

11. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

Amendment to certain enactments.

12. The enactments specified in the Schedule to this Act shall be amended in the manner provided therein.

Substitution in Acts, rules, regulations or notifications by Company in place of Development Bank.

13. In every Act, rule, regulation or notification in force on the appointed day,—

(a) for the words "Industrial Development Bank of India", wherever they occur, the words "Industrial Development Bank of India Limited referred to in clause (b) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003" shall be substituted;

(b) for the words "Development Bank", wherever they occur, the words "Industrial Development Bank of India Limited referred to in clause (b) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003" shall be substituted;

18 of 1964.

(c) for the words and figures "the Development Bank means the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964", the words, brackets, letter and figures "the Industrial Development Bank of India Limited referred to in clause (b) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003" shall be substituted.

8 of 1964.

(d) for the words and figures "the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964", the words, brackets, letter and figures "the Industrial Development Bank of India Limited referred to in clause (b) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003" shall be substituted.

14. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

15. (1) On the appointed day, the Industrial Development Bank of India Act, 1964, shall stand repealed.

Repeal and
saving of Act
18 of 1964.

(2) Notwithstanding the repeal of the Industrial Development Bank of India Act, 1964, the provisions of section 30A of the Act so repealed will continue to be applicable in respect of the arrangement entered into by the Development Bank with an industrial concern up to the appointed day and the Company will be entitled to act upon and enforce the same as fully and effectually as if this Act has not been enacted.

THE SCHEDULE

(See section 12)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934

(2 OF 1934)

AMENDMENTS

1. In section 2, clause (bvii) shall be omitted.
2. In section 17, —
 - (a) in sub-sections (4G) and (4H), the words "the Development Bank or" shall be omitted;
 - (b) in sub-sections (4-I), (8A) and (12B), the words "the Development Bank" shall be omitted.
3. In section 42, in sub-section (1), in the *Explanation*, in clause (c), in sub-clause (ii), the words "or from the Development Bank" shall be omitted.
4. In section 45-I, in clause (bb), in sub-clause (iv), the item (a) shall be omitted.
5. In section 46C, in sub-section (2), clauses (a) and (b) shall be omitted.

PART II

AMENDMENTS TO THE BANKING REGULATION ACT, 1949

(10 OF 1949)

AMENDMENTS

1. In section 5, clause (ffa) shall be omitted.
2. In section 34A, in sub-section (3), the words "the Development Bank" shall be omitted.
3. In section 36AD, in sub-section (3), the words "the Development Bank," shall be omitted.

PART III

AMENDMENT TO THE INDUSTRIAL DISPUTES ACT, 1947

(14 OF 1947)

AMENDMENT

In section 2, in clause (bb), the words "the Industrial Development Bank of India" shall be omitted.

PART IV

AMENDMENTS TO THE SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA ACT, 1989

(39 OF 1989)

AMENDMENTS

In section 2,—

(a) for clause (h), the following clause shall be substituted, namely:—

'(h) "industrial concern in the small scale sector" means any concern engaged or to be engaged in,—

(i) the manufacture, preservation or processing of goods;

- (ii) shipping;
- (iii) mining including development of mines;
- (iv) the hotel industry;
- (v) the transport of passengers or goods by road or by water or by air or by ropeway or by lift;
- (vi) the generation, storage or distribution of electricity or any other form of energy;
- (vii) the maintenance, repair, testing or servicing of machinery or equipment of any description or vehicles or vessels or motor boats or trailers or tractors;
- (viii) assembling, repairing or packing any article with the aid of machinery or power;
- (ix) the setting up of, or development of, an industrial area or an industrial estate;
- (x) fishing or providing shore facilities for fishing or maintenance thereof;
- (xi) providing special or technical knowledge or other services for the promotion of industrial growth;
- (xii) providing engineering, technical, financial, management, marketing or other services or facilities for industry;
- (xiii) service industry such as altering, ornamenting, polishing, finishing, oiling, washing, cleaning or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;
- (xiv) providing medical, health or other allied services;
- (xv) providing services relating to information technology, telecommunication or electronics;
- (xvi) leasing, sub-leasing or giving on hire-purchase of industrial plants, equipments, machinery or other assets including vehicles, ships and aircraft;
- (xvii) such other activity as the Central Government may, having regard to the objects of this Act, by notification, specify in this behalf; or
- (xviii) the research and development of any concept, technology, design, process or product whether in relation to any of the matters aforesaid, including any activities specified under sub-clause (xvii), or any other matter and which is regarded as a small-scale undertaking under section 11B of the Industries (Development and Regulation) Act, 1951;

65 of 1951.

Explanation.— The expression “processing of goods” includes any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation.

(b) after clause (1a), the following clauses shall be inserted, namely:—

2 of 1934.

“(1b) “Reserve Bank” means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;

2 of 1934.

“(1c) “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934;

(c) clause (q) shall be omitted.’

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 24th May, 2004.

No. RPB/10/2004/ACT-5903/E :- The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 31st December, 2003/Pausa 10, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 2003 and is hereby published for general information :-

THE MERCHANT SHIPPING (AMENDMENT) ACT, 2003.

AN ACT

(Act No. 59 of 2003)

(30th December, 2003).

further to amend the Merchant Shipping Act, 1958.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Merchant Shipping (Amendment) Act, 2003.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Substitution of
new sections
for sections
356A to 356H.

2. For sections 356A to 356H of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), the following sections shall be substituted, namely:— 44 of 1958.

Application.

'356A. (1) Save as otherwise provided, this Part shall apply to—

(a) oil tankers of one hundred and fifty tons gross or more, other ships of four hundred tons gross or more and off-shore installations; and

(b) incidents of marine casualty or acts relating to such casualty occurring with grave and imminent danger to Indian coast line or related interests from pollution or threat of pollution in the sea by deliberate, negligent or accidental release of oil, ballast water, noxious liquid and other harmful substances into sea including such incidents occurring on the high seas.

(2) This Part shall not apply to any war ships or other ships owned or operated by the Government and used for the time being on Government non-commercial service.

Definitions.

356B. In this Part, unless the context otherwise requires,—

(a) "ballast" means any solid or liquid placed in a ship to increase the draft to change the trim, to regulate the stability, or to maintain stress load within such limits as may be prescribed;

(b) "cargo" includes ballast and ship's stores and fuel;

(c) "coasts" has the meaning assigned to it in section 357;

(d) "coastal waters" means any part of the territorial waters of India, or any marine areas adjacent thereto over which India has, or, may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force;

80 of 1976.

(e) "Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, including its Protocol of 1978, as amended from time to time in the manner specified therein;

(f) "international pollution prevention certificate" means any certificate issued in accordance with the provisions of Pollution Prevention Conventions and Protocols thereto which are acceded to by India;

(g) "mile" means a nautical mile of 1,852 metres;

(h) "noxious liquid substance" means any substance which has been designated as such by rules made under this Part;

(i) "off-shore installation" means an installation, whether mobile or fixed, which is used or is intended to be used for under-water exploration or exploitation of crude oil, petroleum or other similar mineral oils, under lease, licence or any other form of contractual arrangement and includes—

(a) any installation which could be moved from place to place under its own motive power or otherwise; and

(b) a pipe-line;

(j) "oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

(k) "oily mixture" means a mixture with any oil content;

(l) "oil tanker" means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes any combination carrier or any chemical tanker when it is carrying a cargo or part cargo of oil in bulk;

(m) "reception facilities", in relation to a port, means facilities for enabling tankers or ships using the port to discharge or deposit residue or mixture of any substance subject to control by the Convention;

(n) "ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

356C. (1) No Indian oil tanker or other Indian ship shall proceed to sea unless there is in force, in respect of that ship, a certificate issued by the Central Government, to be called an international oil pollution prevention certificate, in such form, for such duration and subject to such conditions as may be prescribed.

Issue of
pollution
prevention
certificate.

(2) No Indian oil tanker or other Indian ship carrying noxious liquid substances in bulk shall proceed to sea except with a certificate issued by the Central Government, to be called an international pollution prevention certificate, in such form, for such duration and subject to such conditions as may be prescribed for the carriage of noxious liquid substances in bulk.

(3) No Indian oil tanker or other Indian ship to which Annexure IV of the Convention applies shall proceed to sea except with a certificate issued by the Central Government, to be called an international sewage pollution prevention certificate, in such form, for such duration and subject to such conditions as may be prescribed.

Explanation.—For the purposes of this sub-section, “sewage” means—

(i) drainage and other waste from any form of toilets, urinals and water closet scuppers;

(ii) drainage from medical premises (dispensary, sick bay and other like places) via wash basins, wash tubs and scuppers located in such premises;

(iii) drainage from spaces containing living animals; or

(iv) other waste water when mixed with the drainages specified above.

(4) A valid international pollution prevention certificate issued in respect of an oil tanker or a ship, other than an Indian ship, by the Government of the country to which the ship belongs shall, subject to such rules as the Central Government may make in this behalf, have the same effect in India as the corresponding certificate issued in respect of an Indian ship has under this Part.

356D. (1) The Central Government may, at the request of the Government of a country to which the Convention applies, cause any international pollution prevention certificate to be issued in accordance with the Convention in respect of an oil tanker or other ship in that country, if it is satisfied that such certificate can properly be issued, and where a certificate is so issued, it shall contain a statement that it has been issued on request.

Issue of
certificates
for foreign
ships in India
and Indian
ships in
foreign
countries.

(2) The Central Government may request the Government of a country to which the Convention applies, to issue any international pollution prevention certificate in accordance with the Convention in respect of a ship and the certificate issued in pursuance of such a request containing a statement that it has been so issued shall have the same effect as if it had been issued by the Central Government under this Act.

356E. For the purpose of preventing or reducing discharges of harmful substances or mixtures containing such substances from the oil tankers or other ships, the Central Government may make rules requiring Indian oil tankers and other Indian ships to be fitted with such equipment and to comply with such requirements for construction, survey of equipment and structure of such oil tankers or other ships and specifying conditions for making of surveys of all oil tankers or other ships, as may be prescribed, prior to issuing an international pollution prevention certificate.

Requirement
for
construction
and
equipment in
ships to
prevent
pollution.

Explanation.—For the purposes of this section, “harmful substance” means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea, and includes any substance subject to control by the Convention.

356F. (1) Every Indian oil tanker or other Indian ship which carries a substance subject to control by the Convention shall maintain, as may be required, record books in the prescribed forms, on board the oil tanker or other ship.

Record books.

(2) The manner in which record books shall be maintained, the nature of entries to be made therein, the custody and disposal thereof, and all other matters relating thereto shall be such as may be prescribed having regard to the provisions of the Convention.

Inspection and control of oil tankers and other ships to which this Part applies.

356G. (1) A surveyor or any person authorised in this behalf may go, at any reasonable time, on board an oil tanker or other ship to which any of the provisions of this Part applies, for the purposes of—

(a) ensuring that the prohibitions, restrictions and obligations imposed by or under this Part are complied with;

(b) satisfying himself about the adequacy of the measures taken to prevent pollution;

(c) ascertaining the circumstances relating to an alleged discharge of a substance which is subject to control by the Convention from the oil tanker or other ship in contravention of the provisions of this Part;

(d) inspecting any record required to be maintained on board; and

(e) checking the validity of the international pollution prevention certificate.

(2) The surveyor or any such person may, if necessary, make, without unduly delaying the oil tanker or the other ship, a true copy of any record of the oil tanker or the other ship and may require the master of such tanker or ship to certify the copy to be a true copy and such copy shall be admissible as evidence of the facts stated therein.

Information regarding contravention of provisions of Convention.

356H. (1) If, on report from a surveyor or other person authorised to inspect an oil tanker or other ship under section 356G, the Director-General is satisfied that any provision of the Convention has been contravened by such oil tanker or other ship within the coastal waters, the Director-General or any officer authorised by him in this behalf, may—

(a) detain the oil tanker or other ship until the causes of such contravention are removed to the satisfaction of the Director-General or the officer authorised by him; and

(b) proceed against such oil tanker or other ship for recovery of cost of pollution damage, if any, and the cost of prevention of pollution damage and cleaning of such pollution;

Provided that where the Director-General deems it necessary, he may request the Indian Navy or the Coast Guard for preventing the oil tanker or other ship from proceeding to sea, and the Indian Navy or the Coast Guard, as the case may be, shall take action as requested by the Director-General.

(2) On receipt of information from the Government of any country to which the Convention applies that an Indian oil tanker or other ship has contravened any provision of the Convention, the Central Government may, if it deems it necessary so to do, request such Government to furnish further details of the alleged contravention and if satisfied that sufficient evidence is available to establish contravention of any of the provisions of this Part or the rules made thereunder, take appropriate action against the owner or master of the concerned oil tanker or other ship and intimate the reporting Government of the action so taken.

Amendment of section 356-I.

3. In section 356-I of the principal Act, for the words "oil reception facilities", wherever they occur, the words "reception facilities" shall be substituted.

Amendment of section 356J.

4. In section 356J of the principal Act, for the word "oil", wherever it occurs, the words "oil or noxious liquid substance" shall be substituted.

Amendment of section 356K.

5. In section 356K of the principal Act, for the word "oil", wherever it occurs, the words "oil or noxious liquid substance" shall be substituted.

6. In section 356-O of the principal Act, in sub-section (2),—

Amendment
of section
356-O.

(i) for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) prescribe the limits of ballast, and designate noxious liquid substances, under clauses (a) and (h), respectively, of section 356B;

(b) prescribe the forms in which, the duration for which and the conditions subject to which, various international pollution prevention certificates shall be issued under section 356C;

(bb) prescribe the period within which, the manner in which and the conditions for making surveys of oil tankers or other ships prior to issuing an international pollution prevention certificate and the requirements as to equipment which are to be fitted for prevention of pollution by an oil tanker and other ship under section 356E;";

(ii) in clause (c), for the words "oil record books", the words "record books" shall be substituted;

(iii) in clause (d), for the words "oil monitoring system, oily water separator, oil content metre, crude oil washing system, inert gas system or other equipments or contrivances carried out on board for preventing pollution of sea by oil", the words "various equipments required under the Convention" shall be substituted;

(iv) after clause (e), the following clause shall be inserted, namely:—

"(ee) any other matter which, for the implementation of the Convention, has to be or may be prescribed."

Sd/-

T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 6th October, 2004.

No : RPB/31/2004/Ord.1-04/E.-The following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 21st September, 2004 is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, dated the 21st September, 2004/Bhadra 30, 1926 (Saka)

THE PREVENTION OF TERRORISM (REPEAL) ORDINANCE, 2004

NO. 1 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance to repeal the Prevention of Terrorism Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Prevention of Terrorism (Repeal) Ordinance, 2004.

Short title and
commence-
ment.

(2) It shall come into force at once.

15 of 2002.

2. (1) The Prevention of Terrorism Act, 2002 is hereby repealed.

Repeal and
saving, etc.

(2) The repeal of the said Act shall not affect-

(a) the previous operation of, or anything duly done or suffered under, the said Act, or

(b) any right, privilege or obligation or liability acquired, accrued or incurred under the said Act, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under the said Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the said Act had not been repealed:

Provided that notwithstanding anything contained in this sub-section or in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act after the expiry of the period of one year from the commencement of this Ordinance.

(3) Notwithstanding the repeal of section 60 of the said Act, the Review Committee constituted by the Central Government under sub-section (1) of that section, whether or not an application under sub-section (4) of that section has been made, shall review all cases registered under that Act as to whether there is a *prima facie* case for proceeding against the accused thereunder and such review shall be completed within a period of one year from the commencement of this Ordinance and where the Review Committee is of the opinion that there is no *prima facie* case for proceeding against the accused, then,-

(a) in cases in which cognizance has been taken by the court, the cases shall be deemed to have been withdrawn; and

(b) in cases in which investigations are pending, the investigations shall be closed forthwith,

with effect from the date of issuance of the direction by such Review Committee in this regard.

(4) The Review Committee constituted by the Central Government under sub-section (1) of section 60 of the said Act shall, while reviewing cases, have powers of a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:- 5 of 1908.

(a) discovery and production of any document;

(b) requisitioning any public record or copy thereof from any court or office.

(5) The Central Government may constitute more Review Committees, as it may consider necessary, for completing the review within the period specified in sub-section (3).

Sd./-

A.P.J. ABDUL KALAM,
President.

Sd./-

T.K. VISWANATHAN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 6th October, 2004.

No : RPB/32/2004/Ord. 2-04/E.-The following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 21st September, 2004 is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, dated the 21st September, 2004/Bhadra 30, 1926 (Saka)

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ORDINANCE, 2004

NO. 2 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Unlawful Activities (Prevention) Act, 1967.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Unlawful Activities (Prevention) Amendment Ordinance, 2004. Short title and commencement.

(2) It shall come into force at once.

37 of 1967.

2. In the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the principal Act), in the long title, after the word "associations", the words ", and for dealing with terrorist activities," shall be inserted. Amendment of long title.

3. In the principal Act, for the words and figures "Code of Criminal Procedure, 1898", wherever they occur, the word "Code" shall be substituted. Substitution of word "Code" for "Code of Criminal Procedure, 1898".

4. In Chapter I of the principal Act, for sections 1, 2 and 2A, the following sections shall be substituted, namely:-

Amendment of
Chapter I.

Short title, extent
and application.

'1. (1) This Act may be called the Unlawful Activities (Prevention) Act, 1967.

(2) It extends to the whole of India.

(3) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person, who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(5) The provisions of this Act apply also to-

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be.

Definitions.

2. (1) In this Act, unless the context otherwise requires,-

(a) "association" means any combination or body of individuals;

(b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part ;

(c) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.

(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act;

(e) "Designated Authority" means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may be specified by the Central Government or the State Government, by a notification published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "proceeds of terrorism" means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organisation;

(h) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, and includes cash and bank account;

(i) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India;

(j) "State Government", in relation to a Union territory, means the Administrator thereof;

(k) "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

(l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

(m) "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;

(n) "Tribunal" means the Tribunal constituted under section 5;

(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

(p) "unlawful association" means any association,-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity: 45 of 1860.

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;

(q) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Amendment of section 5.

5. In section 5 of the principal Act, in sub-section (7), for the word and figures "Chapter XXXV", the word and figures "Chapter XXVI" shall be substituted.

Substitution of new section for section 10.

6. For section 10 of the principal Act, the following section shall be substituted, namely:-

Penalty for being member of an unlawful association, etc.

"10. Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section,-

(a) a person, who-

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,-

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

7. For Chapter IV of the principal Act, the following Chapters and the Schedule shall be substituted, namely:-

Substitution of new Chapters and Schedule for Chapter IV.

CHAPTER IV

PUNISHMENT FOR TERRORIST ACTIVITIES

15. Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

Terrorist act.

16. (1) Whoever commits a terrorist act shall,—

Punishment for terrorist act.

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

17. Whoever raises fund for the purpose of committing a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for raising fund for terrorist act.

18. Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a

Punishment for conspiracy, etc.

terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for
harbouring, etc.

19. Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:

Provided that this section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

Punishment for being
member of terrorist
gang or organisation.

20. Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for
holding proceeds of
terrorism.

21. Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for
threatening witness.

22. Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

Enhanced penalties.

23. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosives Act, 1884 or the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959, or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

4 of 1884.
6 of 1908.
20 of 1952.
54 of 1959.

(2) Any person who, with intent to aid any terrorist, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

CHAPTER V

FORFEITURE OF PROCEEDS OF TERRORISM

24. (1) No person shall hold or be in possession of any proceeds of terrorism. Forfeiture of proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

25. (1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned. Powers of investigating officer and Designated Authority and appeal against order of Designated Authority.

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism; or

(b) it forms the whole or part of the resources of a terrorist organisation:

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, "cash" means—

- (a) coins or notes in any currency;
- (b) postal orders;
- (c) traveller's cheques;
- (d) banker's drafts; and
- (e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

Court to order
forfeiture of proceeds
of terrorism.

26. Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

Issue of show cause
notice before
forfeiture of proceeds
of terrorism.

27. (1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a *bona fide* transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the court to make an order in respect of the property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the administrator of such property subject to such conditions as may be specified by the court.

Appeal.

28. (1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated.

(2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

29. The order of forfeiture made under this Chapter by the court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under Chapter IV or Chapter VI.

Order of forfeiture not to interfere with other punishments.

30. (1) Where any claim is preferred or any objection is made to the seizure or attachment of any property under section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Claims by third party.

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) Where an appeal has been preferred under sub-section (6) of section 25 and any claimant or objector establishes that the property specified in the notice issued under section 27 is not liable to be forfeited under this Chapter, the said notice shall be withdrawn or modified accordingly.

31. The Designated Authority, acting under the provisions of this Chapter, shall have all the powers of a civil court required for making a full and fair inquiry into the matter before it.

Powers of Designated Authority.

32. Where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Certain transfers to be null and void.

33. (1) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, if not already attached under this Chapter.

Forfeiture of property of certain persons.

(2) Where a person has been convicted of any offence punishable under Chapter IV or Chapter VI, the court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

Company to transfer
shares to
Government.

34. Where any share in a company stands forfeited to the Central Government or the State Government, as the case may be, under this Chapter, then, the company shall, on receipt of the order of the court, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such share.

1 of 1956.

CHAPTER VI

TERRORIST ORGANISATIONS

Amendment of
Schedule, etc.

35. (1) The Central Government may, by order, in the Official Gazette,—

- (a) add an organisation in the Schedule;
- (b) add also an organisation in the Schedule, which is identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, to combat international terrorism;
- (c) remove an organisation from the Schedule;
- (d) amend the Schedule in some other way.

(2) The Central Government shall exercise its power under clause (a) of sub-section (1) in respect of an organisation only if it believes that it is involved in terrorism.

(3) For the purposes of sub-section (2), an organisation shall be deemed to be involved in terrorism if it—

- (a) commits or participates in acts of terrorism, or
- (b) prepares for terrorism, or
- (c) promotes or encourages terrorism, or
- (d) is otherwise involved in terrorism.

Denotification of a
terrorist organisation.

36. (1) An application may be made to the Central Government for the exercise of its power under clause (c) of sub-section (1) of section 35 to remove an organisation from the Schedule.

(2) An application under sub-section (1) may be made by—

- (a) the organisation, or
- (b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been rejected, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 37, within one month from the date of receipt of the order of such rejection by the applicant.

(5) The Review Committee may allow an application for review against rejection to remove an organisation from the Schedule, if it considers that the decision to reject was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order to such effect.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the Schedule.

37. (1) The Central Government shall constitute one or more Review Committees for the purposes of section 36.

Review
Committees.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government and in the case of appointment of a sitting Judge, the concurrence of the Chief Justice of the concerned High Court shall be obtained.

38. (1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Offence relating
to membership
of a terrorist
organisation.

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

39. (1) A person commits the offence relating to support given to a terrorist organisation,-

Offence relating to support given to a terrorist organisation.

(a) who, with intention to further the activity of a terrorist organisation,-

(i) invites support for the terrorist organisation, and

(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is-

(i) to support the terrorist organisation, or

(ii) to further the activity of the terrorist organisation, or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

Offence of raising fund for a terrorist organisation.

40. (1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,-

(a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism.

Explanation.- For the purposes of this sub-section, a reference to provide money or other property includes of its being given, lent or otherwise made available, whether or not for consideration.

(2) A person, who commits the offence of raising fund for a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding fourteen years, or with fine, or with both.

CHAPTER VII

MISCELLANEOUS

41. An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

Continuance of association.

42. The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under section 7, or section 8, or both, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing, direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

Power to delegate.

43. Notwithstanding anything contained in the Code, no police officer,-

Officers competent to investigate offences under Chapters IV and VI.

(a) in the case of the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946, below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

25 of 1946.

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under Chapter IV or Chapter VI.

44. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held *in camera*, if the court so desires.

Protection of witnesses.

(2) A court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the court;

(b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person, who contravenes any decision or direction issued under sub-section (3), shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Cognizance of offences.

45. No court shall take cognizance of any offence-

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapter IV or Chapter VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

Admissibility of evidence collected through the interception of communications.

46. Notwithstanding anything contained in the Indian Evidence Act, 1872 or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 or the Information Technology Act, 2000 or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case:

1 of 1872.

13 of 1885.
21 of 2000.

Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:

Provided further that the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

Bar of jurisdiction.

47. (1) Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate, shall be called in question in any civil court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any civil court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Notwithstanding anything contained in sub-section (1), no civil court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters referred to in section 36.

48. The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

Effect of Act and rules, etc., inconsistent with other enactments.

49. No suit, prosecution or other legal proceeding shall lie against-

Protection of action taken in good faith.

(a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder; and

(b) any serving or retired member of the armed forces or paramilitary forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

50. Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the navy, army or air force or other armed forces of the Union.

Saving.

51. Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the court may deem fit.

Impounding of passport and arms licence of person charge-sheeted under the Act.

52. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(b) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(c) determination of the price of the forfeited property under sub-section (2) of section 28;

(d) the procedure for admission and disposal of an application under sub-section (3) of section 36;

(e) the qualifications of the members of the Review Committee under sub-section (2) of section 37; and

(f) any other matter which is required to be, or may be, prescribed.

Orders and rules to be laid before both Houses of Parliament.

53. Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

THE SCHEDULE

[See sections 2(1)(m) and 35]

TERRORIST ORGANISATIONS

1. BABBAR KHALSA INTERNATIONAL.
2. KHALISTAN COMMANDO FORCE.
3. KHALISTAN ZINDABAD FORCE.
4. INTERNATIONAL SIKH YOUTH FEDERATION.
5. LASHKAR-E-TAIBA/PASBAN-E-AHLE HADIS.
6. JAISH-E-MOHAMMED/TAHRIK-E-FURQAN.
7. HARKAT-UL-MUJAHIDEEN/HARKAT-UL-ANSAR/HARKAT-UL-JEHAD-E-ISLAMI.
8. HIZB-UL-MUJAHIDEEN/HIZB-UL-MUJAHIDEEN PIR PANJAL REGIMENT.
9. AL-UMAR-MUJAHIDEEN.
10. JAMMU AND KASHMIR ISLAMIC FRONT.
11. UNITED LIBERATION FRONT OF ASSAM (ULFA).
12. NATIONAL DEMOCRATIC FRONT OF BODOLAND (NDFB).
13. PEOPLE'S LIBERATION ARMY (PLA).
14. UNITED NATIONAL LIBERATION FRONT (UNLF).
15. PEOPLE'S REVOLUTIONARY PARTY OF KANGLEIPAK (PREPAK).
16. KANGLEIPAK COMMUNIST PARTY (KCP).
17. KANGLEI YAOL KANBA LUP (KYKL).
18. MANIPUR PEOPLE'S LIBERATION FRONT (MPLF).
19. ALL TRIPURA TIGER FORCE.
20. NATIONAL LIBERATION FRONT OF TRIPURA.
21. LIBERATION TIGERS OF TAMIL BELAM (LTTE).
22. STUDENTS ISLAMIC MOVEMENT OF INDIA.
23. DEENDAR ANJUMAN.
24. COMMUNIST PARTY OF INDIA (MARXIST-LENINIST)—PEOPLE'S WAR, ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
25. MAOIST COMMUNIST CENTRE (MCC), ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
26. AL BADR.
27. JAMIAT-UL-MUJAHIDDEN.
28. AL-QAIDA.
29. DUKHTARAN-E-MILLAT (DEM).
30. TAMIL NADU LIBERATION ARMY (TNLA).
31. TAMIL NATIONAL RETRIEVAL TROOPS (TNRT).
32. AKHIL BHARAT NEPALI EKTA SAMAJ (ABNES).

Sd./-

A.P.J. ABDUL KALAM,
President.

Sd./-

T.K. VISWANATHAN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 6th October, 2004.

No : RPB/33/2004/Ord. 3-04/E.-The following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 24th September, 2004 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, dated the 24th September, 2004/Asvina 2, 1926 (Saka)

THE BANKING REGULATION (AMENDMENT) AND MISCELLANEOUS PROVISIONS ORDINANCE,
2004

NO. 3 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Banking Regulation Act, 1949 and the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the Banking Regulation (Amendment) and Miscellaneous Provisions Ordinance, 2004. Short title and commencement.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall come into force at once.

CHAPTER II
AMENDMENTS TO THE BANKING REGULATION ACT, 1949

Amendment of
section 56 of
Act 10 of 1949.

2. In Part V of the Banking Regulation Act, 1949 (hereafter referred to as the principal Act), in the provisions of the principal Act as applied to, or in relation to, co-operative societies, by section 56,--

(J) in section 5 of the principal Act, as amended by sub-clause (i) of clause (c) of the said section 56,--

(A) after clause (ccii), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of March, 1966, namely:-

“(cciiia) “co-operative society” means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;”

(B) after clause (cciii), the following clauses shall be inserted and shall be deemed to have been inserted with effect from the 1st day of March, 1966, namely:-

“(cciiia) “multi-State co-operative bank” means a multi-State co-operative society which is a primary co-operative bank;

“(cciiib) “multi-State co-operative society” means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;”

(C) in clause (ccvii), the words “co-operative society” shall be omitted and shall be deemed to have been omitted with effect from the 1st day of March, 1966;

(II) after section 22 of the principal Act, as amended by clause (o) of said section 56, the following section shall be inserted, namely:-

“22A. Notwithstanding anything contained in any law or, judgment delivered or decree or order of any court made,--

(a) no licence, granted to a multi-State co-operative society by the Reserve Bank under section 22, which was subsisting on the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Ordinance, 2004, shall be invalid or be deemed ever to have been invalid merely by the reason of such judgment, decree or order;

(b) every licence, granted to a multi-State co-operative society by the Reserve Bank under section 22, which was subsisting on the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Ordinance, 2004, shall be valid and be deemed always to have been validly granted in accordance with law;

(c) a multi-State co-operative society whose application for grant of licence for carrying on banking business was pending with the Reserve Bank on the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Ordinance, 2004 shall be eligible to carry on banking business until it is granted a licence in pursuance of section 22 or is, by a notice in writing notified by the Reserve Bank that the licence cannot be granted to it;”

Validation of
licences granted
by Reserve
Bank to multi-
State co-
operative
societies.

(III) for clause (zaa) of the said section 56, the following clauses shall be substituted, namely:-

'(zaa) after section 36AA of the principal Act, the following sections shall be inserted, namely:-

"36AAA. (1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a multi-State co-operative bank being conducted in a manner detrimental to the interest of the depositors or of the multi-State co-operative bank or for securing the proper management of the multi-State co-operative bank, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of directors of such multi-State co-operative bank for a period not exceeding five years as may be specified in the order, which may be extended from time to time, so, however, that total period shall not exceed five years.

Supersession of Board of directors of a multi-State co-operative bank.

(2) The Reserve Bank may, on supersession of the Board of directors of the multi-State co-operative bank under sub-section (1) appoint an Administrator for such period as it may determine.

(3) The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the Board of directors of a multi-State co-operative bank,--

(a) the chairman, managing director and other directors as from the date of supersession of the Board shall vacate their offices as such;

39 of 2002.

(b) all the powers, functions and duties which may, by or under the provisions of the Multi-State Co-operative Societies Act, 2002 or this Act or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of directors of such a multi-State co-operative bank or by a resolution passed in general meeting of such co-operative bank, shall, until the Board of directors of such co-operative bank is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (2):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of such multi-State co-operative bank.

(5) (a) The Reserve Bank may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in discharge of his duties.

(b) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank.

(6) The salary and allowances to the Administrator and the members of the committee constituted by the Reserve Bank shall be such as may be specified by the Reserve Bank and be payable by the concerned multi-State co-operative bank.

(7) On and before expiration of period of supersession of the Board of directors as specified in the order issued under sub-section (1), the

Administrator of the multi-State co-operative bank shall call the general meeting of the society to elect new directors.

(8) Notwithstanding anything contained in any other law or in any contract, or bye-laws of a multi-State co-operative bank, no person shall be entitled to claim any compensation for the loss or termination of his office.

(9) The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of directors of the multi-State co-operative society has been constituted.

Order of winding up multi-State co-operative bank to be final in certain cases.

36AAB. Where a multi-State co-operative bank, being an eligible co-operative bank, has been registered under section 13A of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, as an insured bank, and subsequently - 47 of 1961.

(a) in pursuance of a scheme prepared with the previous approval of the Reserve Bank under section 18 of the Multi-State Co-operative Societies Act, 2002, an order sanctioning a scheme of compromise and arrangement or reorganisation or reconstruction has been made; or 39 of 2002.

(b) on requisition by the Reserve Bank, an order for winding up of the multi-State co-operative bank has been made under section 87 of the Multi-State Co-operative Societies Act, 2002; or 39 of 2002.

(c) an order for the supersession of the Board and the appointment of an Administrator therefor has been made under section 36AAA,

such order for sanctioning the scheme of compromise and arrangement or reorganisation or reconstruction under clause (a) or the winding up of the multi-State co-operative bank under clause (b) or an order for the supersession of the Board and the appointment of an Administrator under clause (c) shall not be liable to be called in question in any manner.

Reimbursement to the Deposit Insurance Corporation by liquidator or transferee bank.

36AAC. Where a multi-State co-operative bank, being an insured bank within the meaning of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, is wound up and the Deposit Insurance Corporation has become liable to the depositors of the insured bank under sub-section (1) or sub-section (2) of section 16 of that Act, the Deposit Insurance Corporation shall be reimbursed by the liquidator or such other person in the circumstances, to the extent and in the manner provided in section 21 of that Act." 47 of 1961.

(zab) in section 36AD, sub-section (3) shall be omitted;"

(IV) in clause (zb) of the said section 56, for the word, figure and letter "Part IIA", the words, figures and letters "Part IIA except sections 36AAA, 36AAB and 36AAC", shall be substituted.

CHAPTER III AMENDMENT TO THE DEPOSIT INSURANCE AND CREDIT GUARANTEE CORPORATION ACT, 1961

Amendment of section 2 of Act 47 of 1961.

3. In the Deposit Insurance and Credit Guarantee Corporation Act, 1961, in section 2,-

(a) in clause (g), the words "co-operative society" shall be omitted and shall be deemed to have been omitted with effect from the 1st day of March,

1966;

(b) in clause (r), for the words "primary co-operative bank", the words "co-operative society", "primary co-operative bank" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of March, 1966.

Sd./-

A.P.J. ABDUL KALAM,
President.

Sd./-

V.K. BHASIN
Joint Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,
Sachivalaya, Gandhinagar, 13th October, 2004.

No. RPB/78/2003/Act-44-03/E :- The Following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA,
MINISTRY OF LAW AND JUSTICE,
(Legislative Department),
New Delhi, the 8th September, 2003/Bhadra, 17, 1925 (Saka).

The following Act of Parliament received the assent of the President on the 7th September, 2003 and is hereby published for general information:-

THE SIXTH SCHEDULE TO THE CONSTITUTION (AMENDMENT) ACT, 2003

AN ACT

(ACT No. 44 of 2003)

(7th September, 2003)

further to amend the Constitution of India in its application to the State of Assam.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Sixth Schedule to the Constitution (Amendment) Act, 2003. Short title.
2. The Sixth Schedule to the Constitution shall, in its application to the State of Assam, have effect subject to the following modifications, namely:— Amendment of Sixth Schedule to the Constitution.
 - (1) In paragraph 1, after sub-paragraph (2), the following proviso shall be inserted, namely:—

“Provided that nothing in this sub-paragraph shall apply to the Bodoland Territorial Areas District.”;

(2) In paragraph 2, after sub-paragraph (1), the following proviso shall be inserted, namely:—

“Provided that the Bodoland Territorial Council shall consist of not more than forty-six members of whom forty shall be elected on the basis of adult suffrage, of whom thirty shall be reserved for the Scheduled Tribes, five for non-tribal communities, five open for all communities and the remaining six shall be nominated by the Governor having same rights and privileges as other members, including voting rights, from amongst the un-represented communities of the Bodoland Territorial Areas District, of which at least two shall be women.”;

(3) In paragraph 2, in sub-paragraph (3), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the District Council constituted for the Bodoland Territorial Areas District shall be called the Bodoland Territorial Council.”;

(4) In paragraph 3, for sub-paragraph (3), the following sub-paragraph shall be substituted, namely:—

“(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3A or sub-paragraph (2) of paragraph 3B, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A or sub-paragraph (1) of paragraph 3B shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.”;

(5) After paragraph 3A, the following paragraph shall be inserted, namely:—

“3B. Additional powers of the Bodoland Territorial Council to make laws.—

(1) Without prejudice to the provisions of paragraph 3, the Bodoland Territorial Council within its areas shall have power to make laws with respect to:—(i) Agriculture, including agricultural education and research; protection against pests and prevention of plant diseases; (ii) Animal husbandry and veterinary, that is to say, preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice, cattle pounds; (iii) Co-operation; (iv) Cultural affairs; (v) Education, that is to say, primary education, higher secondary including vocational training, adult education, college education (general); (vi) Fisheries; (vii) Flood control for protection of village, paddy fields, markets and towns (not of technical nature); (viii) Food and civil supply; (ix) Forests (other than reserved forests); (x) Handloom and textile; (xi) Health and family welfare; (xii) Intoxicating liquors, opium and derivatives, subject to the provisions of entry 84 of List I of the Seventh Schedule; (xiii) Irrigation; (xiv) Labour and employment; (xv) Land and Revenue; (xvi) Library services (financed and controlled by the State Government); (xvii) Lotteries (subject to the provisions of entry 40 of List I of the Seventh Schedule), theatres, dramatic performances and cinemas (subject to the provisions of entry 60 of List I of the Seventh Schedule); (xviii) Markets and fairs; (xix) Municipal corporation, improvement trust, district boards and other local authorities; (xx) Museum and archaeology institutions controlled or financed by the State, ancient and historical monuments and records other than those declared by or under any law made by Parliament to be of national importance; (xxi) Panchayat and rural development; (xxii) Planning and development; (xxiii) Printing and stationery; (xxiv) Public health engineering; (xxv) Public works department; (xxvi) Publicity and public relations; (xxvii) Registration of births and deaths; (xxviii) Relief and rehabilitation; (xxix) Sericulture; (xxx) Small, cottage and rural industry subject to the provisions of entries 7 and 52 of List I of the Seventh Schedule; (xxxi) Social welfare; (xxxii) Soil conservation; (xxxiii) Sports and youth welfare; (xxxiv) Statistics; (xxxv) Tourism; (xxxvi) Transport (roads, bridges, ferries and other means of communications not specified in List I of the Seventh Schedule, municipal tramways, ropeways, inland waterways and traffic thereon subject to the provision of List I and List III of the Seventh Schedule with regard to such waterways, vehicles other than mechanically propelled vehicles); (xxxvii) Tribal research institute controlled and financed by the State Government; (xxxviii) Urban development—town and country planning; (xxxix) Weights and measures

subject to the provisions of entry 50 of List I of the Seventh Schedule; and (x1) Welfare of plain tribes and backward classes:

Provided that nothing in such laws shall—

(a) extinguish or modify the existing rights and privileges of any citizen in respect of his land at the date of commencement of this Act; and

(b) disallow any citizen from acquiring land either by way of inheritance, allotment, settlement or by any other way of transfer if such citizen is otherwise eligible for such acquisition of land within the Bodoland Territorial Areas District.

(2) All laws made under paragraph 3 or under this paragraph shall in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.

(3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom:

Provided that the President may direct the Governor to return the law to the Bodoland Territorial Council, together with the message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six months from the date of receipt of such message and, if the law is again passed by the said Council with or without amendment it shall be presented again to the President for his consideration.”;

(6) In paragraph 4, after sub-paragraph (5), the following sub-paragraph shall be inserted, namely:—

“(6) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule.”;

(7) In paragraph 10, after sub-paragraph (3), the following sub-paragraph shall be inserted, namely:—

“(4) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule.”;

(8) In paragraph 12, in sub-paragraph (1), in clause (a), for the words, figures and letter “matters specified in paragraph 3 or paragraph 3A of this Schedule”, the words, figures and letters “matters specified in paragraph 3 or paragraph 3A or paragraph 3B of this Schedule” shall be substituted;

(9) In paragraph 17, the following proviso shall be inserted, namely:—

“Provided that nothing in this paragraph shall apply to the Bodoland Territorial Areas District.”;

(10) In paragraph 19, after sub-paragraph (3), the following sub-paragraph shall be inserted, namely:—

“(4) As soon as possible after the commencement of this Act, an Interim Executive Council for Bodoland Territorial Areas District in Assam shall be formed by the Governor from amongst leaders of the Bodo movement, including the signatories to the Memorandum of Settlement, and shall provide adequate representation to the non-tribal communities in that area:

Provided that the Interim Council shall be for a period of six months during which endeavour to hold the election to the Council shall be made.

Explanation.—For the purposes of this sub-paragraph, the expression “Memorandum of Settlement” means the Memorandum signed on the 10th day of February, 2003 between Government of India, Government of Assam and Bodo Liberation Tigers.”;

(11) In paragraph 20, in Part I of the Table, after entry 2, the following entry shall be inserted, namely:—

“3. The Bodoland Territorial Areas District.”.

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat.

S. S. PARMAR.
Secretary to Government.

Government Central Press, Gandhinagar.



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PART VI

Acts of Parliament and Ordinance promulgated by the President.

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Corrigendum

Sachivalaya, Gandhinagar, 12th October, 2004.

No. RPB/78/2003/ACT. 44-03/95/E.—The Election and Other Related Law (Amendment) Act, 2003 republished as Act No. 44 of 2003 in the Gujarat Government Gazette, Extraordinary, Part-VI, Dated the 13th January, 2004, Extra No. 9 at pages 9-1 to 9-5 is hereby cancelled as the Election and Other Related Laws (Amendment) Act, 2003 (Act No. 46 of 2003) has already been republished in the Gujarat Government Gazette, Extraordinary, Part-VI, dated the 13th January, 2004, Extra No. 11 at pages 11-1 to 11-5.

By order and in the name of the Governor of Gujarat,

K. K. JOSHI,
Deputy Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT
Sachivalaya, Gandhinagar, 22nd November, 2004.

No. RPB/39/2004/Act-23-04/E :- The Following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA,
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department),
New Delhi, the 10th September, 2004/Bhadra 19, 1926 (Saka)

The following Act of Parliament received the assent of the President on the 10th September, 2004 and is hereby published for general information:-

THE FINANCE (NO. 2) ACT, 2004

AN ACT

(ACT No. 23 of 2004)

(10th September, 2004)

to give effect to the financial proposals of the Central Government for the financial year 2004-2005.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance (No. 2) Act, 2004.

(2) Save as otherwise provided in this Act, sections 2 to 65 shall be deemed to have come into force on the 1st day of April, 2004.

Short title
and
commence-
ment.

CHAPTER II

RATES OF INCOME-TAX

2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2004, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) shall be increased by a surcharge for purposes of the Union calculated in each case in the manner provided therein.

Income-tax.

(2) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding five thousand rupees, in addition to total income, and the total income exceeds fifty thousand rupees, then,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and

(b) the income-tax chargeable shall be calculated as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income;

(iii) the amount of income-tax determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax in respect of the total income:

Provided that the amount of income-tax so arrived at, as reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, shall be increased by a surcharge for purposes of the Union calculated in each case in the manner provided in that Paragraph and the sum so arrived at shall be the income-tax in respect of the total income.

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be:

Provided that the amount of income-tax computed in accordance with the provisions of section 112 shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part I of the First Schedule:

Provided further that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115E and 115JB of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased by a surcharge for purposes of the Union, calculated,—

(a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such income-tax where the total income exceeds eight hundred and fifty thousand rupees;

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such income-tax;

(c) in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such income-tax.

(4) In cases in which tax has to be charged and paid under section 115-O or sub-section (2) of section 115R of the Income-tax Act, the tax shall be charged and paid at the rate as specified in those sections and shall be increased by a surcharge for purposes of the Union, calculated at the rate of two and one-half per cent. of such tax.

(5) In cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, at the rates in force, the deductions shall be made at the rates specified in Part II of the First Schedule and shall be increased, by a surcharge for purposes of the Union, calculated in each case, in the manner provided therein.

(6) In cases in which tax has to be deducted under sections 194C, 194E, 194EE, 194F, 194G, 194H, 194-I, 194J, 194LA, 196B, 196C and 196D of the Income-tax Act, the deductions shall be made at the rates specified in those sections and shall be increased by a surcharge for purposes of the Union, calculated,—

(a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds eight hundred and fifty thousand rupees;

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such tax;

(c) in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such tax.

(7) In cases in which tax has to be collected under the proviso to section 194B of the Income-tax Act, the collection shall be made at the rates specified in Part II of the First Schedule, and shall be increased, by a surcharge for purposes of the Union, calculated in the manner provided therein.

(8) In cases in which tax has to be collected under section 206C of the Income-tax Act, the collection shall be made at the rates specified in that section and shall be increased by a surcharge for purposes of the Union, calculated,—

(a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such tax where the amount or the aggregate of such amounts collected, and subject to the collection, exceeds eight hundred and fifty thousand rupees;

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such tax;

(c) in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such tax.

(9) Subject to the provisions of sub-section (10), in cases in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the Income-tax Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act shall be increased by a surcharge for purposes of the Union, calculated in each case in the manner provided therein:

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be:

Provided further that the amount of "advance tax" computed in accordance with the provisions of section 111A or section 112 of the Income-tax Act shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule:

Provided also that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115E and 115JB of the Income-tax Act, "advance tax" computed under the first proviso shall be increased by a surcharge for purposes of the Union, calculated;—

(a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of "advance tax" where the total income exceeds eight hundred and fifty thousand rupees;

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such "advance tax";

(c) in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such "advance tax".

(10) In cases to which, Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding five thousand rupees, in addition to total income and the total income exceeds fifty thousand rupees, then, in charging income-tax under sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging or computing such income-tax or, as the case may be, "advance tax" in respect of the total income; and

(b) such income-tax or, as the case may be, "advance tax" shall be so charged or computed as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax or "advance tax" shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax or "advance tax" shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income were the total income;

(iii) the amount of income-tax or "advance tax" determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax or, as the case may be, "advance tax" determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax or, as the case may be, "advance tax" in respect of the total income:

Provided that the amount of income-tax or "advance tax" so arrived at, as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act, shall be increased by a surcharge for purposes of the Union calculated in each case, in the manner provided therein.

(11) The amount of income-tax as specified in sub-sections (4) to (10) and as increased by a surcharge for purposes of the Union calculated in the manner provided therein, shall be further increased by an additional surcharge for purposes of the Union, to be called the "Education Cess on Income-tax", so as to fulfil the commitment of the Government to provide and finance universalised quality basic education, calculated at the rate of two per cent. of such income-tax and surcharge.

(12) For the purposes of this section and the First Schedule,—

(a) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act for the assessment year commencing on the 1st day of April, 2004, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

(b) "insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance);

(c) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule;

(d) all other words and expressions used in this section and the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

CHAPTER III

DIRECT TAXES

Income-tax

3. In section 2 of the Income-tax Act, in clause (24), after sub-clause (xii), the following sub-clause shall be inserted with effect from the 1st day of April, 2005, namely:—

Amendment
of section 2.

"(xiii) any sum referred to in clause (v) of sub-section (2) of section 56;".

4. In section 7 of the Income-tax Act, after clause (ii), the following clause shall be inserted at the end, namely:—

Amendment
of section 7.

"(iii) the contribution made, by the Central Government in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD.".

5. In section 10 of the Income-tax Act,—

Amendment
of section 10.

(a) in clause (4), in sub-clause (ii), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2006, namely:—

"Provided further that nothing contained in this sub-clause shall apply to any income by way of interest paid or credited on or after the 1st day of April, 2005 to the Non-Resident (External) Account of such individual;";

(b) in clause (6BB), for the words, figures and letters "an agreement entered after the 31st day of March, 1997 but before the 1st day of April, 1999 and approved by the Central Government in this behalf", the words, figures and letters "an agreement entered into after the 31st day of March, 1997 but before the 1st day of April, 1999, or entered into after the 31st day of March, 2005 and approved by the Central Government in this behalf" shall be substituted with effect from the 1st day of April, 2006;

(c) in clause (15),—

(A) after sub-clause (iiib), the following sub-clause shall be inserted with effect from the 1st day of April, 2005, namely:—

"(iiic) interest payable to the European Investment Bank, on a loan granted by it in pursuance of the framework-agreement for financial co-operation entered into on the 25th day of November, 1993 by the Central Government with that Bank;";

(B) in sub-clause (iv), in item (fa), after the words "by a scheduled bank", the words, figures and letters "before the 1st day of April, 2005" shall be inserted with effect from the 1st day of April, 2006;

(d) in clause (15A), before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2006, namely:—

“Provided that nothing contained in this clause shall apply to any such agreement entered into on or after the 1st day of April, 2005.”;

(e) after clause (18), the following clause shall be inserted with effect from the 1st day of April, 2005, namely:—

“(19) family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including paramilitary forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed;”;

(f) in clause (23FB), with effect from the 1st day of October, 2004,—

(i) in *Explanation 1*, for clause (c), the following clause shall be substituted, namely:—

“(c) “venture capital undertaking” means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992 and notified as such in the Official Gazette by the Board for the purposes of this clause;” 15 of 1992.

(ii) *Explanation 2* shall be omitted;

(g) in clause (23G), before *Explanation 1*, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that the income, by way of dividends, other than dividends referred to in section 115-O, interest or long-term capital gains of an infrastructure capital company, shall be taken into account in computing the book profit and income-tax payable under section 115JB.”;

(h) after clause (36), the following shall be inserted with effect from the 1st day of April, 2005, namely:—

“(37) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head “Capital gains” arising from the transfer of agricultural land, where—

(i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2;

(ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation.—For the purposes of this clause, the expression “compensation or consideration” includes the compensation or consideration enhanced or further enhanced by any court, tribunal or other authority;

(38) any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund where—

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter.

Explanation.—For the purposes of this clause, “equity oriented fund” means a fund—

(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than fifty per cent. of the total proceeds of such fund; and

(ii) which has been set up under a scheme of a Mutual Fund specified under clause (23D):

Provided that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.’.

6. In section 12AA of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted at the end, with effect from the 1st day of October, 2004, namely:—

Amendment
of section
12AA.

“(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.”.

7. In section 17 of the Income-tax Act, in clause (1), after sub-clause (vii), the following sub-clause shall be inserted, namely:—

Amendment
of section 17.

“(viii) the contribution made by the Central Government in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;”.

8. In section 32 of the Income-tax Act, in sub-section (1), in clause (iia), in the first proviso, in clause (B), for the words “twenty-five per cent.”, the words “ten per cent.” shall be substituted with effect from the 1st day of April, 2005.

Amendment
of section 32.

9. In section 33AC of the Income-tax Act, in sub-section (1), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

Amendment
of section
33AC.

“Provided also that no deduction shall be allowed under this section for any assessment year commencing on or after the 1st day of April, 2005.”.

10. In section 35AC of the Income-tax Act, for sub-sections (4) and (5), the following sub-sections shall be substituted with effect from the 1st day of October, 2004, namely:—

Amendment
of section
35AC.

“(4) Where an association or institution is approved by the National Committee under sub-section (1), and subsequently—

(i) that Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which approval was granted; or

(ii) such association or institution, to which approval has been granted, has not furnished to the National Committee, after the end of each financial year, a report in such form and setting forth such particulars and within such time as may be prescribed,

the National Committee may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval:

Provided that a copy of the order withdrawing the approval shall be forwarded by the National Committee to the Assessing Officer having jurisdiction over the concerned association or institution.

(5) Where any project or scheme has been notified as an eligible project or scheme under clause (b) of the *Explanation*, and subsequently—

(i) the National Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which such project or scheme was notified; or

(ii) a report in respect of such eligible project or scheme has not been furnished after the end of each financial year, in such form and setting forth such particulars and within such time as may be prescribed,

such notification may be withdrawn in the same manner in which it was issued:

Provided that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or local authority, as the case may be:

Provided further that a copy of the notification by which the notification of the eligible project or scheme is withdrawn shall be forwarded to the Assessing Officer having jurisdiction over the concerned association, institution, public sector company or local authority, as the case may be, carrying on such eligible project or scheme.”

Amendment
of section 40

11. In section 40 of the Income-tax Act, in clause (a), for sub-clause (i), the following shall be substituted with effect from the 1st day of April, 2005, namely:—

“(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Explanation.—For the purposes of this sub-clause,—

(A) “royalty” shall have the same meaning as in *Explanation 2* to clause (vi) of sub-section (1) of section 9;

(B) “fees for technical services” shall have the same meaning as in *Explanation 2* to clause (vii) of sub-section (1) of section 9;

(ia) any interest, commission or brokerage, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200;

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Explanation.—For the purposes of this sub-clause,—

(i) “commission or brokerage” shall have the same meaning as in clause (i) of the *Explanation* to section 194H;

(ii) “fees for technical services” shall have the same meaning as in *Explanation* 2 to clause (vii) of sub-section (1) of section 9;

(iii) “professional services” shall have the same meaning as in clause (a) of the *Explanation* to section 194J;

(iv) “work” shall have the same meaning as in *Explanation* III to section 194C;

(ib) any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004;.

12. In section 48 of the Income-tax Act, after the fourth proviso and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

Amendment
of section 48.

‘Provided also that no deduction shall be allowed in computing the income chargeable under the head “Capital gains” in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.’

13. In section 56 of the Income-tax Act, in sub-section (2), after clause (iv), the following clause shall be inserted at the end, with effect from the 1st day of April, 2005, namely:—

Amendment
of section 56.

(v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004, the whole of such sum:

Provided that this clause shall not apply to any sum of money received—

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer.

Explanation.—For the purposes of this clause, “relative” means—

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) brother or sister of either of the parents of the individual;

(v) any lineal ascendant or descendant of the individual;

(vi) any lineal ascendant or descendant of the spouse of the individual;

(vii) spouse of the person referred to in clauses (ii) to (vi).’

14. In section 71 of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2005, namely:—

Amendment
of section 71.

“(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head “Profits and gains of business or profession” is a loss and the assessee has income assessable under the head “Salaries”, the assessee shall not be entitled to have such loss set off against such income.’

Insertion of
new section
80CCD.

Deduction in
respect of
contribution
to pension
scheme of
Central
Government.

15. After section 80CCC of the Income-tax Act, the following section shall be inserted, namely:—

'80CCD. (1) Where an assessee, being an individual employed by the Central Government on or after the 1st day of January, 2004, has in the previous year paid or deposited any amount in his account under a pension scheme notified or as may be notified by the Central Government, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income, of the whole of the amount so paid or deposited as does not exceed ten per cent. of his salary in the previous year.

(2) Where, in the case of an assessee referred to in sub-section (1), the Central Government makes any contribution to his account referred to in that sub-section, the assessee shall be allowed a deduction in the computation of his total income, of the whole of the amount contributed by the Central Government as does not exceed ten per cent. of his salary in the previous year.

(3) Where any amount standing to the credit of the assessee in his account referred to in sub-section (1), in respect of which a deduction has been allowed under that sub-section or sub-section (2), together with the amount accrued thereon, if any, is received by the assessee or his nominee, in whole or in part, in any previous year,—

(a) on account of closure or his opting out of the pension scheme referred to in sub-section (1); or

(b) as pension received from the annuity plan purchased or taken on such closure or opting out,

the whole of the amount referred to in clause (a) or clause (b) shall be deemed to be the income of the assessee or his nominee, as the case may be, in the previous year in which such amount is received, and shall accordingly be charged to tax as income of that previous year.

(4) Where any amount paid or deposited by the assessee has been allowed as a deduction under sub-section (1), no rebate with reference to such amount shall be allowed under section 88.

Explanation.—For the purposes of this section, "salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

16. In section 80DD of the Income-tax Act, in the *Explanation*, with effect from the 1st day of April, 2005,—

(a) in clause (c), after the figures "1995", occurring at the end, the words, brackets, letters and figures 'and includes "autism", "cerebral palsy" and "multiple disability" referred to in clauses (a), (c) and (h) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999' shall be inserted;

44 of 1999.

(b) in clause (e), after the figures "1995", occurring at the end, the words, brackets, letters and figures 'or such other medical authority as may, by notification, be specified by the Central Government for certifying "autism", "cerebral palsy", "multiple disabilities", "person with disability" and "severe disability" referred to in clauses (a), (c), (h), (j) and (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999' shall be inserted;

44 of 1999.

(c) in clause (f), after the figures "1995", occurring at the end, the words, brackets, letter and figures 'or clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999' shall be inserted;

44 of 1999.

Amendment
of section
80DD.

(d) for clause (g), the following clause shall be substituted, namely:—

“(g) “person with severe disability” means—

(i) a person with eighty per cent. or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or

(ii) a person with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;”

1 of 1996.

44 of 1999.

17. In section 80-IA of the Income-tax Act, with effect from the 1st day of April, 2005,—

Amendment
of section
80-IA.

(a) in sub-section (2), after the words “generates power or commences transmission or distribution of power”, the words “or undertakes substantial renovation and modernisation of the existing transmission or distribution lines” shall be inserted;

(b) in sub-section (3),—

(A) in the opening portion, for the words, brackets and figures “undertaking referred to in clause (iv)”, the words, brackets and figures “undertaking referred to in clause (ii) or clause (iv)” shall be substituted;

(B) after clause (ii) and before *Explanation 1*, the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-section shall apply in the case of transfer, either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (7) of section 2 of the Electricity Act, 2003, whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganisation of the Board under Part XIII of that Act.”;

36 of 2003.

(c) in sub-section (4),—

(A) in clause (ii), for the figures, letters and words “31st day of March, 2004”, the figures, letters and words “31st day of March, 2005” shall be substituted;

(B) in clause (iv), after sub-clause (b), the following shall be inserted, namely:—

“(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2006.

Explanation.—For the purposes of this sub-clause, “substantial renovation and modernisation” means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent. of the book value of such plant and machinery as on the 1st day of April, 2004.”

18. In section 80-IB of the Income-tax Act, with effect from the 1st day of April, 2005,—

Amendment
of section
80-IB.

(a) in sub-section (1), for the brackets, figures, word and letter “(II) and (IIA)”, the brackets, figures, letters and word “(II), (IIA) and (IIB)” shall be substituted;

(b) in sub-section (4), after the third proviso, the following provisos shall be inserted, namely:—

“Provided also that in the case of an industrial undertaking in the State of Jammu and Kashmir, the provisions of the first proviso shall have effect as if for the figures, letters and words “31st day of March, 2004”, the figures, letters and words “31st day of March, 2005” had been substituted:

Provided also that no deduction under this sub-section shall be allowed to an industrial undertaking in the State of Jammu and Kashmir which is engaged in the manufacture or production of any article or thing specified in Part C of the Thirteenth Schedule.;

(c) in sub-section (8A), in clause (iii), for the figures, letters and words "1st day of April, 2004", the figures, letters and words "1st day of April, 2005" shall be substituted;

(d) for sub-section (10), the following shall be substituted, namely:—

"(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall be hundred per cent. of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction;—

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre;

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent. of the aggregate built-up area of the housing project or two thousand square feet, whichever is less.;"

(e) in sub-section (IIA), for the words "an undertaking deriving profit from", the words "an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or from" shall be substituted;

(f) after sub-section (IIA), the following sub-section shall be inserted, namely:—

“(II B) The amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area shall be hundred per cent. of the profits and gains of such business for a period of five consecutive assessment years, beginning with the initial assessment year, if—

(i) such hospital is constructed at any time during the period beginning on the 1st day of October, 2004 and ending on the 31st day of March, 2008;

(ii) the hospital has at least one hundred beds for patients;

(iii) the construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority; and

(iv) the assessee furnishes alongwith the return of income, the report of audit in such form and containing such particulars as may be prescribed, and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

Explanation.—For the purposes of this sub-section, a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the concerned local authority.”;

(g) in sub-section (14),—

(A) clauses (a) and (aa) shall be re-lettered as clauses (aa) and (ab) respectively, and before clause (aa) as so re-lettered, the following clause shall be inserted, namely:—

“(a) “built-up area” means the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but does not include the common areas shared with other residential units;”;

(B) in clause (c),—

(I) in sub-clause (iv), after the words “undertaking engaged”, the words “in the business of processing, preservation and packaging of fruits or vegetables or” shall be inserted;

(II) after sub-clause (vi), the following sub-clause shall be inserted, namely:—

“(vii) in the case of an undertaking engaged in operating and maintaining a hospital in a rural area, means the assessment year relevant to the previous year in which the undertaking begins to provide medical services;”.

Amendment
of section
80U.

19. In section 80U of the Income-tax Act, for the *Explanation*, the following *Explanation* shall be substituted with effect from the 1st day of April, 2005, namely:—

Explanation.—For the purposes of this section,—

(a) “disability” shall have the meaning assigned to it in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and includes “autism”, “cerebral palsy” and “multiple disabilities” referred to in clauses (a), (c) and (h) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;

1 of 1996.

44 of 1999.

(b) “medical authority” means the medical authority as referred to in clause (p) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, or such other medical authority as may, by notification, be specified by the Central Government for certifying “autism”, “cerebral palsy”, “multiple disabilities”, “person with disability” and “severe disability” referred to in clauses (a), (c), (h), (j) and (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;

1 of 1996.

44 of 1999.

(c) “person with disability” means a person referred to in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, or clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;

1 of 1996.

44 of 1999.

(d) “person with severe disability” means—

(i) a person with eighty per cent. or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or

1 of 1996.

(ii) a person with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.’

44 of 1999.

Amendment
of section 87.

20. In section 87 of the Income-tax Act, with effect from the 1st day of April, 2005,—

(a) in sub-section (1), for the words, figures and letters “sections 88, 88A, 88B and 88C”, the words, figures and letters “sections 88, 88A, 88B, 88C, 88D and 88E” shall be substituted;

(b) in sub-section (2), after the words, figures and letter “or section 88C”, the words, figures and letters “or section 88D or section 88E” shall be inserted.

Amendment
of section 88.

21. In section 88 of the Income-tax Act, in sub-section (2), in clause (xv), in sub-clause (c), after item (6), the following item shall be inserted with effect from the 1st day of April, 2005, namely:—

“(6A) the assessee’s employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or”.

Insertion of
new section
88D.

22. After section 88C of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:—

Rebate of
income-tax
in case of
certain
individuals.

“88D. An assessee, being an individual resident in India,—

(a) whose total income does not exceed one hundred thousand rupees, shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with

which he is chargeable for any assessment year, of an amount equal to hundred per cent. of such income-tax;

(b) whose total income exceeds one hundred thousand rupees and the income-tax payable on such total income (as computed before allowing the deductions under this Chapter) exceeds the amount by which such total income is in excess of one hundred thousand rupees, shall be entitled to a deduction from the amount of income-tax on his total income, of an amount equal to the amount by which the income-tax payable on such total income is in excess of the amount by which the total income exceeds one hundred thousand rupees."

23. After section 88D of the Income-tax Act, as so inserted, the following section shall be inserted with effect from the 1st day of April, 2005, namely:—

Insertion of new section 88E.

'88E. (1) Where the total income of an assessee in a previous year includes any income, chargeable under the head "Profits and gains of business or profession", arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income arising from such transactions, computed in the manner provided in sub-section (2), of an amount equal to the securities transaction tax paid by him in respect of the taxable securities transactions entered into in the course of his business during that previous year:

Rebate in respect of securities transaction tax.

Provided that no deduction under this sub-section shall be allowed unless the assessee furnishes along with the return of income, evidence of payment of securities transaction tax in the prescribed form:

Provided further that the amount of deduction under this sub-section shall not exceed the amount of income-tax on such income computed in the manner provided in sub-section (2).

(2) For the purposes of sub-section (1), the amount of income-tax on the income arising from the taxable securities transactions, referred to in that sub-section, shall be equal to the amount calculated by applying the average rate of income-tax on such income.

Explanation.—For the purposes of this section, the expressions "taxable securities transaction" and "securities transaction tax" shall have the same meanings respectively assigned to them under Chapter VII of the Finance (No. 2) Act, 2004.

24. In section 90 of the Income-tax Act, in the *Explanation*, the words and brackets "where such foreign company has not made the prescribed arrangement for declaration and payment within India, of the dividends (including dividends on preference shares) payable out of its income in India" shall be omitted and shall be deemed to have been omitted with effect from the 1st day of April, 1962.

Amendment of section 90.

25. In section 94 of the Income-tax Act, with effect from the 1st day of April, 2005,—

Amendment of section 94.

(a) in sub-section (7), for clause (b), the following clause shall be substituted, namely:—

"(b) such person sells or transfers—

- (i) such securities within a period of three months after such date; or
- (ii) such unit within a period of nine months after such date;"

(b) after sub-section (7), the following sub-section shall be inserted, namely:—

"(8) Where—

(a) any person buys or acquires any units within a period of three months prior to the record date;

(b) such person is allotted additional units without any payment on the basis of holding of such units on such date;

(c) such person sells or transfers all or any of the units referred to in clause (a) within a period of nine months after such date, while continuing to hold all or any of the additional units referred to in clause (b),

then, the loss, if any, arising to him on account of such purchase and sale of all or any of such units shall be ignored for the purposes of computing his income chargeable to tax and notwithstanding anything contained in any other provision of this Act, the amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional units referred to in clause (b) as are held by him on the date of such sale or transfer.”;

(c) in the *Explanation*, for clause (aa), the following clause shall be substituted, namely:—

‘(aa) “record date” means such date as may be fixed by—

(i) a company for the purposes of entitlement of the holder of the securities to receive dividend; or

(ii) a Mutual Fund or the Administrator of the specified undertaking or the specified company as referred to in the *Explanation* to clause (35) of section 10, for the purposes of entitlement of the holder of the units to receive income, or additional unit without any consideration, as the case may be.’

Insertion of
new section
111A.

Tax on short-
term capital
gains in
certain cases.

26. After section 111 of the Income-tax Act, the following section shall be inserted, with effect from the 1st day of April, 2005, namely:—

‘111A. (1) Where the total income of an assessee includes any income chargeable under the head “Capital gains”, arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund and—

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter,

the tax payable by the assessee on the total income shall be the aggregate of—

(i) the amount of income-tax calculated on such short-term capital gains at the rate of ten per cent.; and

(ii) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee:

Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the rate of ten per cent.

(2) Where the gross total income of an assessee includes any short term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

(3) Where the total income of an assessee includes any short-term capital gains referred to in sub-section (1), the rebate under section 88 shall be allowed from the income-tax on the total income as reduced by such capital gains.

Explanation.—For the purposes of this section, the expression “equity oriented fund” shall have the meaning assigned to it in the *Explanation* to clause (38) of section 10.’

27. In section 115AD of the Income-tax Act, in sub-section (1), in clause (ii), the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

Amendment
of section
115AD.

"Provided that the amount of income-tax calculated on the income by way of short-term capital gains referred to in section 111A shall be at the rate of ten per cent.;"

28. In section 115JB of the Income-tax Act, in the *Explanation*, with effect from the 1st day of April, 2005,—

Amendment
of section
115JB.

(a) in clause (f), for the word and figures "section 10", the words, figures, brackets and letter "section 10 [other than the provisions contained in clause (23G) thereof]" shall be substituted;

(b) in clause (ii), for the words and figures "provisions of section 10", the words, figures, brackets and letter "provisions of section 10 [other than the provisions contained in clause (23G) thereof]" shall be substituted.

29. In section 115R of the Income-tax Act, in sub-section (2),—

Amendment
of section
115R.

(a) for the words "at the rate of twelve and one-half per cent.:", the following shall be substituted with effect from the 9th day of July, 2004, namely:—

"at the rate of—

(i) twelve and one-half per cent. on income distributed to any person being an individual or a Hindu undivided family; and

(ii) twenty per cent. on income distributed to any other person.:"

(b) in the proviso, the words, figures and letters "for a period of one year commencing from the 1st day of April, 2003" shall be omitted.

30. After Chapter XII-F of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of April, 2005, namely:—

Insertion of
new Chapter
XII-G.

'CHAPTER XII-G

SPECIAL PROVISIONS RELATING TO INCOME OF SHIPPING COMPANIES

A.—Meaning of certain expressions

115V. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "bareboat charter" means hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;

(b) "bareboat charter-cum-demise" means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered;

(c) "Director-General of Shipping" means the Director-General of Shipping appointed by the Central Government under sub-section (1) of section 7 of the Merchant Shipping Act, 1958;

(d) "factory ship" includes a vessel providing processing services in respect of processing of the fishing produce;

(e) "fishing vessel" shall have the meaning assigned to it in clause (12) of section 3 of the Merchant Shipping Act, 1958;

(f) "pleasure craft" means a ship of a kind whose primary use is for the purposes of sport or recreation;

(g) "qualifying company" means a company referred to in section 115VC;

(h) "qualifying ship" means a ship referred to in section 115VD;

44 of 1958.

44 of 1958.

(i) "seagoing ship" means a ship if it is certified as such by the competent authority of any country;

(j) "tonnage income" means the income of a tonnage tax company computed in accordance with the provisions of this Chapter;

(k) "tonnage tax activities" means the activities referred to in sub-sections (2) and (5) of section 115V-I;

(l) "tonnage tax company" means a qualifying company in relation to which tonnage tax option is in force;

(m) "tonnage tax scheme" means a scheme for computation of profits and gains of business of operating qualifying ships under the provisions of this Chapter.

B.—Computation of tonnage income from business of operating qualifying ships

115VA. Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of a company, the income from the business of operating qualifying ships, may, at its option, be computed in accordance with the provisions of this Chapter and such income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

115VB. For the purposes of this Chapter, a company shall be regarded as operating a ship if it operates any ship whether owned or chartered by it and includes a case where even a part of the ship has been chartered in by it in an arrangement such as slot charter, space charter or joint charter:

Provided that a company shall not be regarded as the operator of a ship which has been chartered out by it on bareboat charter-cum-demise terms or on bareboat charter terms for a period exceeding three years.

115VC. For the purposes of this Chapter, a company is a qualifying company if—

(a) it is an Indian company;

(b) the place of effective management of the company is in India;

(c) it owns at least one qualifying ship; and

(d) the main object of the company is to carry on the business of operating ships.

Explanation.—For the purposes of this section, "place of effective management of the company" means—

(A) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(B) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.

115VD. For the purposes of this Chapter, a ship is a qualifying ship if—

(a) it is a sea going ship or vessel of fifteen net tonnage or more;

(b) it is a ship registered under the Merchant Shipping Act, 1958, or a ship registered outside India in respect of which a licence has been issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958; and

Computation of profits and gains from the business of operating qualifying ships.

Operating ships.

Qualifying company.

Qualifying ship.

(c) a valid certificate in respect of such ship indicating its net tonnage is in force,

but does not include—

(i) a seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;

(ii) fishing vessels;

(iii) factory ships;

(iv) pleasure crafts;

(v) harbour and river ferries;

(vi) off-shore installations;

(vii) dredgers;

(viii) a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.

115VE. (1) A tonnage tax company engaged in the business of operating qualifying ships shall compute the profits from such business under the tonnage tax scheme.

Manner of computation of income under tonnage tax scheme.

(2) The business of operating qualifying ships giving rise to income referred to in sub-section (1) of section 115V-I shall be considered as a separate business (hereafter in this Chapter referred to as the tonnage tax business) distinct from all other activities or business carried on by the company.

(3) The profits referred to in sub-section (1) shall be computed separately from the profits and gains from any other business.

(4) The tonnage tax scheme shall apply only if an option to that effect is made in accordance with the provisions of section 115VP.

(5) Where a company engaged in the business of operating qualifying ships is not covered under the tonnage tax scheme or, has not made an option to that effect, as the case may be, the profits and gains of such company from such business shall be computed in accordance with the other provisions of this Act.

115VF. Subject to the other provisions of this Chapter, the tonnage income shall be computed in accordance with section 115VG and the income so computed shall be deemed to be the profits chargeable under the head "Profits and gains of business or profession" and the relevant shipping income referred to in sub-section (1) of section 115V-I shall not be chargeable to tax.

Tonnage income.

115VG. (1) The tonnage income of a tonnage tax company for a previous year shall be the aggregate of the tonnage income of each qualifying ship computed in accordance with the provisions of sub-sections (2) and (3).

Computation of tonnage income.

(2) For the purposes of sub-section (1), the tonnage income of each qualifying ship shall be the daily tonnage income of each such ship multiplied by—

(a) the number of days in the previous year; or

(b) the number of days in part of the previous year in case the ship is operated by the company as a qualifying ship for only part of the previous year, as the case may be.

(3) For the purposes of sub-section (2), the daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table below shall be the amount specified in the corresponding entry in column (2) of the Table:

TABLE

Qualifying ship having net tonnage	Amount of daily tonnage income
(1)	(2)
up to 1,000	Rs. 46 for each 100 tons
exceeding 1,000 but not more than 10,000	Rs. 460 <i>plus</i> Rs. 35 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	Rs. 3,610 <i>plus</i> Rs. 28 for each 100 tons exceeding 10,000 tons
exceeding 25,000	Rs. 7,810 <i>plus</i> Rs. 19 for each 100 tons exceeding 25,000 tons.

(4) For the purposes of this Chapter, the tonnage shall mean the tonnage of a ship indicated in the certificate referred to in section 115VX and includes the deemed tonnage computed in the prescribed manner.

Explanation.—For the purposes of this sub-section, “deemed tonnage” shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.

(5) The tonnage shall be rounded off to the nearest multiple of hundred tons and for this purpose any tonnage consisting of kilograms shall be ignored and thereafter if such tonnage is not a multiple of hundred, then, if the last figure in that amount is fifty tons or more, the tonnage shall be increased to the next higher tonnage which is a multiple of hundred and if the last figure is less than fifty tons, the tonnage shall be reduced to the next lower tonnage which is a multiple of hundred; and the tonnage so rounded off shall be the tonnage of the ship for the purposes of this section.

(6) Notwithstanding anything contained in any other provision of this Act, no deduction or set off shall be allowed in computing the tonnage income under this Chapter.

115VH. (1) Where a qualifying ship is operated by two or more companies by way of joint interest in the ship or by way of an agreement for the use of the ship and their respective shares are definite and ascertainable, the tonnage income of each such company shall be an amount equal to a share of income proportionate to its share of that interest.

(2) Subject to the provisions of sub-section (1), where two or more companies are operators of a qualifying ship, the tonnage income of each company shall be computed as if each had been the only operator.

115V-I. (1) For the purposes of this Chapter, the relevant shipping income of a tonnage tax company means—

(i) its profits from core activities referred to in sub-section (2);

(ii) its profits from incidental activities referred to in sub-section (5):

Provided that where the aggregate of all such incomes specified in clause (ii) exceeds one-fourth per cent. of the turnover from core activities referred to in sub-section (2), such excess shall not form part of the relevant shipping income for the purposes of this Chapter and shall be taxable under the other provisions of this Act.

(2) The core activities of a tonnage tax company shall be—

(i) its activities from operating qualifying ships; and

Calculation in
case of joint
operation,
etc.

Relevant
shipping
income.

(ii) other ship-related activities mentioned as under:—

(A) shipping contracts in respect of—

(i) earning from pooling arrangements;

(ii) contracts of affreightment.

Explanation.—For the purposes of this sub-clause,—

(a) “pooling arrangement” means an agreement between two or more persons for providing services through a pool or operating one or more ships and sharing earnings or operating profits on the basis of mutually agreed terms;

(b) “contract of affreightment” means a service contract under which a tonnage tax company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period;

(B) specific shipping trades, being—

(i) on-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board;

(ii) slot charters, space charters, joint charters, feeder services, container box leasing of container shipping.

(3) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, exclude any activity referred to in clause (ii) of sub-section (2) or prescribe the limit up to which such activities shall be included in the core activities for the purposes of this section.

(4) Every notification issued under this Chapter shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

(5) The incidental activities shall be the activities which are incidental to the core activities and which may be prescribed for the purpose.

(6) Where a tonnage tax company operates any ship, which is not a qualifying ship, the income attributable to operating such non-qualifying ship shall be computed in accordance with the other provisions of this Act.

(7) Where any goods or services held for the purposes of tonnage tax business are transferred to any other business carried on by a tonnage tax company, or where any goods or services held for the purposes of any other business carried on by such tonnage tax company are transferred to the tonnage tax business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the tonnage tax business does not correspond to the market value of such goods or services as on the date of the transfer, then, the relevant shipping income under this section shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

Provided that where, in the opinion of the Assessing Officer, the computation of the relevant shipping income in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such income on such reasonable basis as he may deem fit.

Explanation.—For the purposes of this sub-section, “market value”, in relation to any goods or services, means the price that such goods or services would ordinarily fetch on sale in the open market.

(8) Where it appears to the Assessing Officer that, owing to the close connection between the tonnage tax company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the tonnage tax company more than the ordinary profits which might be expected to arise in the tonnage tax business, the Assessing Officer shall, in computing the relevant shipping income of the tonnage tax company for the purposes of this Chapter, take the amount of income as may reasonably be deemed to have been derived therefrom.

Explanation.—For the purposes of this Chapter, in case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage income.

Treatment of
common
costs.

115VJ. (1) Where a tonnage tax company also carries on any business or activity other than the tonnage tax business, common costs attributable to the tonnage tax business shall be determined on a reasonable basis.

(2) Where any asset, other than a qualifying ship, is not exclusively used for the tonnage tax business by the tonnage tax company, depreciation on such asset shall be allocated between its tonnage tax business and other business on a fair proportion to be determined by the Assessing Officer, having regard to the use of such asset for the purpose of the tonnage tax business and for the other business.

Depreciation.

115VK. (1) For the purposes of computing depreciation under clause (iv) of section 115VL, the depreciation for the first previous year of the tonnage tax scheme (hereafter in this section referred to as “the first previous year” shall be computed on the written down value of the qualifying ships as specified under sub-section (2).

(2) The written down value of the block of assets, being ships, as on the first day of the first previous year, shall be divided in the ratio of the book written down value of the qualifying ships (hereafter in this section referred to as the “qualifying assets”) and the book written down value of the non-qualifying ships (hereafter in this section referred to as the other assets).

(3) The block of qualifying assets as determined under sub-section (2) shall constitute a separate block of assets for the purposes of this Chapter.

(4) For the purposes of sub-section (2), the book written down value of the block of qualifying assets and the block of other assets shall be computed in the following manner, namely:—

(a) the book written down value of each qualifying asset and each other asset as on the first day of the previous year and which form part of the block of assets to be divided shall be determined by taking the book written down value of each asset appearing in the books of account as on the last day of the preceding previous year;

Provided that any change in the value of the assets consequent to their revaluation after the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President shall be ignored;

(b) the book written down value of all the qualifying assets and other assets shall be aggregated; and

(c) the ratio of the aggregate book written down value of the qualifying assets to the aggregate book written down value of the other assets shall be determined.

(5) Where an asset forming part of a block of qualifying assets begins to be used for purposes other than the tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of that block and shall be added to the block of other assets.

Explanation.—For the purposes of this sub-section, appropriate portion of the written down value allocable to the asset, which begins to be used for purposes other than the tonnage tax business, shall be an amount which bears the same proportion to the written down value of the block of qualifying assets as on the first day of the previous year as the book written down value of the asset beginning to be used for purposes other than tonnage tax business bears to the book written down value of all the assets forming the block of qualifying asset.

(6) Where an asset forming part of a block of other assets begins to be used for tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of the block of other assets and shall be added to the block of qualifying asset.

Explanation.—For the purposes of this sub-section, appropriate portion of written down value allocable to the asset which begins to be used for the tonnage tax business shall be an amount which bears the same proportion to the written down value of the block of other assets as on the first day of the previous year as the book written down value of the asset beginning to be used for tonnage tax business bears to the total book written down value of all the assets forming the block of other assets.

(7) For the purposes of computing depreciation under clause (iv) of section 115VL in respect of an asset mentioned in sub-sections (5) and (6), depreciation computed for the previous year shall be allocated in the ratio of the number of days for which the asset was used for the tonnage tax business and for purposes other than tonnage tax business.

Explanation 1.—For the removal of doubts, it is hereby declared that for the purposes of this Act, depreciation on the block of qualifying assets and block of other assets so created shall be allowed as if such written down value referred to in sub-section (2) had been brought forward from the preceding previous year.

Explanation 2.—For the purposes of this section, “book written down value” means the written down value as appearing in the books of account.

115VL. Notwithstanding anything contained in any other provision of this Act, in computing the tonnage income of a tonnage tax company for any previous year (hereafter in this section referred to as the “relevant previous year”) in which it is chargeable to tax in accordance with this Chapter—

General
exclusion of
deduction and
set off, etc.

(i) sections 30 to 43B shall apply as if every loss, allowance or deduction referred to therein and relating to or allowable for any of the relevant previous years, had been given full effect to for that previous year itself;

(ii) no loss referred to in sub-sections (1) and (3) of section 70 or sub-sections (1) and (2) of section 71 or sub-section (1) of section 72 or sub-section (1) of section 72A, in so far as such loss relates to the business of operating qualifying ships of the company, shall be carried forward or set off where such loss relates to any of the previous years when the company is under the tonnage tax scheme;

(iii) no deduction shall be allowed under Chapter VI-A in relation to the profits and gains from the business of operating qualifying ships; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the tonnage tax business shall be computed as if the company has claimed and has been actually allowed the deduction in respect of depreciation for the relevant previous years.

Exclusion of
loss.

115VM. (1) Section 72 shall apply in respect of any loss that have accrued to a company before its option for tonnage tax scheme and which are attributable to its tonnage tax business, as if such losses had been set off against the relevant shipping income in any of the previous years when the company is under the tonnage tax scheme.

(2) The losses referred to in sub-section (1) shall not be available for set off against any income other than relevant shipping income in any previous year beginning on or after the company exercises its option under section 115VP.

(3) Any apportionment necessary to determine the losses referred to in sub-section (1) shall be made on a reasonable basis.

Chargeable
gains from
transfer of
tonnage tax
assets.

115VN. Any profits or gains arising from the transfer of a capital asset being an asset forming part of the block of qualifying assets shall be chargeable to income-tax in accordance with the provisions of section 45, read with section 50, and the capital gains so arising shall be computed in accordance with the provisions of sections 45 to 51:

Provided that for the purpose of computing such profits or gains, the provisions of section 50 shall have effect as if for the words "written down value of the block of assets", the words "written down value of the block of qualifying assets" had been substituted.

Explanation.—For the purposes of this Chapter, "written down value of the block of qualifying assets" means the written down value computed in accordance with the provisions of sub-section (2) of section 115VK.

Exclusion
from
provisions of
section
115JB.

115V-O. The book profit or loss derived from the activities of a tonnage tax company, referred to in sub-section (1) of section 115V-I, shall be excluded from the book profit of the company for the purposes of section 115JB.

C.—Procedure for option of tonnage tax scheme

Method and
time of
opting for
tonnage tax
scheme.

115VP. (1) A qualifying company may opt for the tonnage tax scheme by making an application to the Joint Commissioner having jurisdiction over the company in the form and manner as may be prescribed, for such scheme.

(2) The application under sub-section (1) may be made by any existing qualifying company at any time after the 30th day of September, 2004 but before the 1st day of January, 2005 (hereafter referred to as the "initial period"):

Provided that—

(i) a company incorporated after the initial period; or

(ii) a qualifying company incorporated before the initial period but which becomes a qualifying company for the first time after the initial period,

may make an application within three months of the date of its incorporation or the date on which it became a qualifying company, as the case may be.

(3) On receipt of an application for option for tonnage tax scheme under sub-section (1), the Joint Commissioner may call for such information or documents from the company as he thinks necessary in order to satisfy himself about the eligibility of the company and after satisfying himself about such eligibility of the company to make such option for tonnage tax scheme, he—

(i) shall pass an order in writing approving the option for tonnage tax scheme; or

(ii) shall, if he is not so satisfied, pass an order in writing refusing to approve the option for tonnage tax scheme,

and a copy of such order shall be sent to the applicant:

Provided that no order under clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(4) Every order granting or refusing the approval of the option for tonnage tax scheme under clause (i) or clause (ii), as the case may be, of sub-section (3) shall be passed before the expiry of one month from the end of the month in which the application was received under sub-section (1).

(5) Where an order granting approval is passed under sub-section (3), the provisions of this Chapter shall apply from the assessment year relevant to the previous year in which the option for tonnage tax scheme is exercised.

115VQ. (1) An option for tonnage tax scheme, after it has been approved under sub-section (3) of section 115VP, shall remain in force for a period of ten years from the date on which such option has been exercised and shall be taken into account from the assessment year relevant to the previous year in which such option is exercised.

Period for which tonnage tax option to remain in force.

(2) An option for tonnage tax scheme shall cease to have effect from the assessment year relevant to the previous year in which—

(a) the qualifying company ceases to be a qualifying company;

(b) a default is made in complying with the provisions contained in section 115VT or section 115VU or section 115VV;

(c) the tonnage tax company is excluded from the tonnage tax scheme under section 115VZC;

(d) the qualifying company furnishes to the Assessing Officer, a declaration in writing to the effect that the provisions of this Chapter may not be made applicable to it,

and the profits and gains of the company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

115VR. (1) An option for tonnage tax scheme approved under sub-section (3) of section 115VP may be renewed within one year from the end of the previous year in which the option ceases to have effect.

Renewal of tonnage tax scheme.

(2) The provisions of sections 115VP and 115VQ shall apply in relation to a renewal of the option for tonnage tax scheme in the same manner as they apply in relation to the approval of option for tonnage tax scheme.

115VS. A qualifying company, which, on its own, opts out of the tonnage tax scheme or makes a default in complying with the provisions of section 115VT or section 115VU or section 115VV or whose option has been excluded from tonnage tax scheme in pursuance of an order made under sub-section (1) of section 115VZC, shall not be eligible to opt for tonnage tax scheme for a period of ten years from the date of opting out or default or order, as the case may be.

Prohibition to opt for tonnage tax scheme in certain cases.

D.—Conditions for applicability of tonnage tax scheme

115VT. (1) A tonnage tax company shall, subject to and in accordance with the provisions of this section, be required to credit to a reserve account (hereafter in this section referred to as the Tonnage Tax Reserve Account) an amount not less than twenty per cent. of the book profit derived from the activities referred to in clauses (i) and (ii) of sub-section (1) of section 115V-I in each previous year to be utilised in the manner laid down in sub-section (3):

Transfer of profits to Tonnage Tax Reserve Account.

Provided that a tonnage tax company may transfer a sum in excess of twenty per cent. of the book profit and such excess sum transferred shall also be utilised in the manner laid down in sub-section (3).

Explanation.—For the purposes of this section, “book profit” shall have the same meaning as in the *Explanation* to sub-section (2) of section 115JB so far as it relates to the income derived from the activities referred to in clauses (i) and (ii) of sub-section (1) of section 115V-1.

(2) Where the company has book profit from the business of operating qualifying ships and book loss from any other sources, and consequently, the company is not in a position to create the full or any part of the reserves under sub-section (1), the company shall create the reserves to the extent possible in that previous year and the shortfall, if any, shall be added to the amount of the reserves required to be created for the following previous year and such shortfall shall be deemed to be part of the reserve requirement of that following previous year:

Provided that to the extent the shortfall in creation of reserves during a particular previous year is carried forward to the following previous year under this sub-section, the company shall be considered as having created sufficient reserves for the first mentioned previous year:

Provided further that nothing contained in the first proviso shall apply in respect of the second year in case the shortfall in creation of reserves continues for two consecutive previous years.

(3) The amount credited to the Tonnage Tax Reserve Account under sub-section (1) shall be utilised by the company before the expiry of a period of eight years next following the previous year in which the amount was credited—

(a) for acquiring a new ship for the purposes of the business of the company; and

(b) until the acquisition of a new ship, for the purposes of the business of operating qualifying ships other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

(4) Where any amount credited to the Tonnage Tax Reserve Account under sub-section (1),—

(a) has been utilised for any purpose other than that referred to in clause (a) or clause (b) of sub-section (3); or

(b) has not been utilised for the purpose specified in clause (a) of sub-section (3); or

(c) has been utilised for the purpose of acquiring a new ship as specified in clause (a) of sub-section (3), but such ship is sold or otherwise transferred, other than in any scheme of demerger by the company to any person at any time before the expiry of three years from the end of the previous year in which it was acquired,

an amount which bears the same proportion to the total relevant shipping income of the year in which such reserve was created, as the amount out of such reserve so utilised or not utilised bears to the total reserve created during that year under sub-section (1) shall be taxable under the other provisions of this Act—

(i) in a case referred to in clause (a), in the year in which the amount was so utilised; or

(ii) in a case referred to in clause (b), in the year immediately following the period of eight years specified in sub-section (3); or

(iii) in a case referred to in clause (c), in the year in which the sale or transfer took place:

Provided that the income so taxable under the other provisions of this Act shall be reduced by the proportionate tonnage income charged to tax in the year of creation of such reserves.

(5) Notwithstanding anything contained in any other provision of this Chapter, where the amount credited to the Tonnage Tax Reserve Account in accordance with sub-section (1) is less than the minimum amount required to be credited under sub-section (1), an amount which bears the same proportion to the total relevant shipping income, as the shortfall in credit to the reserves bears to the minimum reserve required to be credited under sub-section (1) shall not be taxable under the tonnage tax scheme and shall be taxable under the other provisions of this Act.

(6) If the reserve required to be created under sub-section (1) is not created for any two consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the failure to create the reserve under sub-section (1) had occurred.

Explanation.—For the purposes of this section, “new ship” includes a qualifying ship which, before the date of acquisition by the qualifying company was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India.

115VU. (1) A tonnage tax company, after its option has been approved under sub-section (3) of section 115VP, shall comply with the minimum training requirement in respect of trainee officers in accordance with the guidelines framed by the Director-General of Shipping and notified in the Official Gazette by the Central Government.

Minimum training requirement for tonnage tax company.

(2) The tonnage tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping along with the return of income under section 139 to the effect that such company has complied with the minimum training requirement in accordance with the guidelines referred to in sub-section (1) for the previous year.

(3) If the minimum training requirement is not complied with for any five consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the fifth consecutive previous year in which the failure to comply with the minimum training requirement under sub-section (1) had occurred.

115VV. (1) In the case of every company which has opted for tonnage tax scheme, not more than forty-nine per cent. of the net tonnage of the qualifying ships operated by it during any previous year shall be chartered in.

Limit for charter in of tonnage.

(2) The proportion of net tonnage referred to in sub-section (1) in respect of a previous year shall be calculated based on the average of net tonnage during that previous year.

(3) For the purposes of sub-section (2), the average of net tonnage shall be computed in such manner as may be prescribed in consultation with the Director-General of Shipping.

(4) Where the net tonnage of ships chartered in exceeds the limit under sub-section (1) during any previous year, the total income of such company in relation to that previous year shall be computed as if the option for tonnage tax scheme does not have effect for that previous year.

(5) Where the limit under sub-section (1) had exceeded in any two consecutive previous years, the option for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the limit had exceeded.

Explanation.—For the purposes of this section, the term “chartered in” shall exclude a ship chartered in by the company on bareboat charter-cum-demise terms.

Maintenance
and audit of
accounts.

115VW. An option for tonnage tax scheme by a tonnage tax company shall not have effect in relation to a previous year unless such company—

(i) maintains separate books of account in respect of the business of operating qualifying ships; and

(ii) furnishes, along with the return of income for that previous year, the report of an accountant, in the prescribed form duly signed and verified by such accountant.

Explanation.—For the purposes of this section, “accountant” shall have the same meaning as in the *Explanation* below sub-section (2) of section 288.

Determination
of tonnage.

115VX. (1) For the purposes of this Chapter,—

(a) the tonnage of a ship shall be determined in accordance with the valid certificate indicating its tonnage;

(b) “valid certificate” means,—

(i) in case of ships registered in India—

(a) having a length of less than twenty-four metres, a certificate issued under the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958; 44 of 1958.

(b) having a length of twenty-four metres or more, an international tonnage certificate issued under the provisions of the Convention on Tonnage Measurement of Ships, 1969, as specified in the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958; 44 of 1958.

(ii) in case of ships registered outside India, a licence issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 specifying the net tonnage on the basis of Tonnage Certificate issued by the Flag State Administration where the ship is registered or any other evidence acceptable to the Director-General of Shipping produced by the ship owner while seeking permission for chartering in the ship. 44 of 1958.

E.—Amalgamation and demerger of shipping companies

Amalgamation.

115VY. Where there has been an amalgamation of a company with another company or companies, then, subject to the other provisions of this section, the provisions relating to the tonnage tax scheme shall, as far as may be, apply to the amalgamated company if it is a qualifying company:

Provided that where the amalgamated company is not a tonnage tax company, it shall exercise an option for tonnage tax scheme under sub-section (1) of section 115VP within three months from the date of the approval of the scheme of amalgamation:

Provided further that where the amalgamating companies are tonnage tax companies, the provisions of this Chapter shall, as far as may be, apply to the amalgamated company for such period as the option for tonnage tax scheme which has the longest unexpired period continues to be in force:

Provided also that where one of the amalgamating companies is a qualifying company as on the 1st day of October, 2004 and which has not exercised the option for tonnage tax scheme within the initial period, the provisions of this Chapter shall not apply to the amalgamated company and the income of the amalgamated company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

115VZ. Where in a scheme of demerger, the demerged company transfers its business to the resulting company before the expiry of the option for tonnage tax scheme, then, subject to the other provisions of this Chapter, the tonnage tax scheme shall, as far as may be, apply to the resulting company for the unexpired period if it is a qualifying company: Demerger.

Provided that the option for tonnage tax scheme in respect of the demerged company shall remain in force for the unexpired period of the tonnage tax scheme if it continues to be a qualifying company.

F.—Miscellaneous

115VZA. (1) A temporary cessation (as against permanent cessation) of operating any qualifying ship by a company shall not be considered as a cessation of operating of such qualifying ship and the company shall be deemed to be operating such qualifying ship for the purposes of this Chapter.

Effect of temporarily ceasing to operate qualifying ships.

(2) Where a qualifying company continues to operate a ship, which temporarily ceases to be a qualifying ship, such ship shall not be considered as a qualifying ship for the purposes of this Chapter.

G.—Provisions of this Chapter not to apply in certain cases

115VZB. (1) Subject to the provisions of this Chapter, the tonnage tax scheme shall not apply where a tonnage tax company is a party to any transaction or arrangement which amounts to an abuse of the tonnage tax scheme.

Avoidance of tax.

(2) For the purposes of sub-section (1), a transaction or arrangement shall be considered an abuse if the entering into or the application of such transaction or arrangement results, or would but for this section have resulted, in a tax advantage being obtained for—

- (i) a person other than a tonnage tax company; or
- (ii) a tonnage tax company in respect of its non-tonnage tax activities.

Explanation.—For the purposes of this section, “tax advantage” include—

(i) the determination of the allowance for any expense or interest, or the determination of any cost or expense allocated or apportioned, or, as the case may be, which has the effect of reducing the income or increasing the loss, as the case may be, from activities other than tonnage tax activities chargeable to tax, computed on the basis of entries made in the books of account in respect of the previous year in which the transaction was entered into; or

(ii) a transaction or arrangement which produces to the tonnage tax company more than ordinary profits which might be expected to arise from tonnage tax activities.

115VZC. (1) Where a tonnage tax company is a party to any transaction or arrangement referred to in sub-section (1) of section 115VZB, the Assessing Officer shall, by an order in writing, exclude such company from the tonnage tax scheme:

Exclusion from tonnage tax scheme.

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon such company to show cause, on a date and time to be specified in the notice, why it should not be excluded from the tonnage tax scheme:

Provided further that no order under this sub-section shall be passed without the previous approval of the Chief Commissioner.

(2) The provisions of this section shall not apply where the company shows to the satisfaction of the Assessing Officer that the transaction or arrangement was a *bona fide* commercial transaction and had not been entered into for the purpose of obtaining tax advantage under this Chapter.

(3) Where an order has been passed under sub-section (1) by the Assessing Officer excluding the tonnage tax company from the tonnage tax scheme, the option for tonnage tax scheme shall cease to be in force from the first day of the previous year in which the transaction or arrangement was entered into.

Amendment
of section
119.

31. In section 119 of the Income-tax Act, in sub-section (2), in clause (a), after the bracket and words "(whether by way of relaxation of any of the provisions of sections", the figures and letters "115P, 115S," shall be inserted with effect from the 1st day of October, 2004.

Amendment
of section
139.

32. In section 139 of the Income-tax Act, in sub-section (9), in the *Explanation*, in clause (c), in sub-clause (i), for the words "deducted at source and", the words, figures and letters "deducted at source before the 1st day of April, 2005 and" shall be substituted with effect from the 1st day of April, 2005.

Amendment
of section
139A.

33. In section 139A of the Income-tax Act,—

(a) in sub-section (5A), the first proviso shall be omitted with effect from the 1st day of April, 2005;

(b) in sub-sections (5C) and (5D), for the word "buyer", the words "buyer or licensee or lessee" shall be substituted with effect from the 1st day of October, 2004.

Insertion of
new section
142A.

34. After section 142 of the Income-tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 15th day of November, 1972, namely:—

Estimate by
Valuation
Officer in
certain cases.

142A. (1) For the purposes of making an assessment or re-assessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.

(2) The Valuation Officer to whom a reference is made under sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957.

27 of 1957

(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or re-assessment:

Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957.

27 of 1957

Amendment
of section
153.

35. In section 153 of the Income-tax Act, in *Explanation 1*, with effect from the 1st day of October, 2004,—

(a) in clause (v), for the words "that section," the words "that section, or" shall be substituted;

(b) after clause (v) and before the words "shall be excluded", the following clauses shall be inserted, namely:—

"(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R.”

36. In section 153B of the Income-tax Act, in sub-section (1), in the *Explanation*, with effect from the 1st day of October, 2004,—

Amendment of section 153B.

(a) in clause (iv), for the words “that section,”, the words “that section, or” shall be substituted;

(b) after clause (iv) and before the words “shall be excluded”, the following clauses shall be inserted, namely:—

“(v) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R.”

37. In section 194C of the Income-tax Act, in sub-section (3), for clause (i), the following clause shall be substituted with effect from the 1st day of October, 2004, namely:—

Amendment of section 194C.

“(i) the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) or, as the case may be, sub-section (2) shall be liable to deduct income-tax under this section; or”.

38. After section 194L of the Income-tax Act, the following section shall be inserted with effect from the 1st day of October, 2004, namely:—

Insertion of new section 194LA.

‘194LA. Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent. of such sum as income-tax thereon:

Payment of compensation on acquisition of certain immovable property.

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed one hundred thousand rupees.

Explanation.—For the purposes of this section,—

(i) “agricultural land” means agricultural land in India including land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(ii) “immovable property” means any land (other than agricultural land) or any building or part of a building.’

39. In section 197 of the Income-tax Act, in sub-section (1), for the figures and letters “194C, 194D, 194G, 194H, 194-I, 194J, 194K”, the figures and letters “194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA” shall be substituted with effect from the 1st day of October, 2004.

Amendment of section 197.

Amendment
of section
198.

40. In section 198 of the Income-tax Act, for the portion beginning with the words and figures "the provisions of sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004.

Amendment
of section
199.

41. In section 199 of the Income-tax Act,—

(a) in sub-section (1), for the portion beginning with the words and figures "the provisions of sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted at the end with effect from the 1st day of April, 2005, namely:—

"(3) Where any deduction is made in accordance with the foregoing provisions of this Chapter on or after the 1st day of April, 2005 and paid to the Central Government, the amount of tax deducted and specified in the statement referred to in section 203AA shall be treated as tax paid on behalf of the persons referred to in sub-section (1) or, as the case may be, sub-section (2) and credit shall be given to him for the amount so deducted in the assessment made under this Act for the assessment year for which such income is assessable without the production of certificate."

Amendment
of section
200.

42. In section 200 of the Income-tax Act,—

(a) in sub-section (1), for the portion beginning with the words and figures "the provisions of sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2005, namely:—

"(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare quarterly statements for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed."

Amendment
of section
202.

43. In section 202 of the Income-tax Act, for the portion beginning with the word and figures "sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004.

Amendment
of section
203.

44. In section 203 of the Income-tax Act,—

(a) in sub-section (1), for the portion beginning with the words and figures "the provisions of sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted at the end with effect from the 1st day of April, 2005, namely:—

"(3) Where the tax has been deducted or paid in accordance with the foregoing provisions of this Chapter on or after the 1st day of April, 2005, there shall be no requirement to furnish a certificate referred to in sub-section (1) or, as the case may be, sub-section (2)."

45. For section 203A of the Income-tax Act, the following section shall be substituted with effect from the 1st day of October, 2004, namely:—

Substitution of new section for section 203A.

'203A. (1) Every person, deducting tax or collecting tax in accordance with the provisions of this Chapter, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".

Tax deduction and collection account number.

(2) Where a "tax deduction account number" or, as the case may be, a "tax collection account number" or a "tax deduction and collection account number" has been allotted to a person, such person shall quote such number—

(a) in all challans for the payment of any sum in accordance with the provisions of section 200 or sub-section (3) of section 206C;

(b) in all certificates furnished under section 203 or sub-section (5) of section 206C;

(c) in all the returns, delivered in accordance with the provisions of section 206 or sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(d) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

46. After section 203A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:—

Insertion of new section 203AA.

"203AA. The prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) of section 200, shall, within the prescribed time after the end of each financial year beginning on or after the 1st day of April, 2005 prepare and deliver to every person from whose income the tax has been deducted or in respect of whose income the tax has been paid a statement in the prescribed form specifying the amount of tax deducted or paid and such other particulars as may be prescribed."

Furnishing of statement of tax deducted.

47. In section 204 of the Income-tax Act, for the portion beginning with the word and figures "sections 192" and ending with the words and figures "sections 195 to 203", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004.

Amendment of section 204.

48. In section 205 of the Income-tax Act, for the portion beginning with the word and figures "sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004.

Amendment of section 205.

49. In section 206 of the Income-tax Act,—

Amendment of section 206.

(a) in sub-section (1), with effect from the 1st day of October, 2004,—

(i) for the words "prescribed income-tax authority", the words "prescribed income-tax authority or such other authority or agency as may be prescribed" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that the Board may, if it considers necessary or expedient so to do, frame a scheme for the purposes of filing such returns with such other authority or agency referred to in this sub-section."

(b) in sub-section (2), with effect from the 1st day of April, 2005,—

(i) for the words “other than the principal officer in the case of every company”, the words “other than the prescribed person in the case of every office of the Government and the principal officer in the case of every company” shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely:—

“Provided that the prescribed person in the case of every office of Government and the principal officer in the case of every company responsible for deducting tax under the foregoing provisions of this Chapter shall, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.”

Amendment
of section
206C.

50. In section 206C of the Income-tax Act,—

(a) after sub-section (1B), the following sub-section shall be inserted with effect from the 1st day of October, 2004, namely:—

“(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as “licensee or lessee”) for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

TABLE

Sl. No.	Nature of contract or licence or lease, etc.	Percentage
(1)	(2)	(3)
(i)	Parking lot	Two per cent.
(ii)	Toll plaza	Two per cent.
(iii)	Mining and quarrying	Two per cent.;

(b) in sub-section (2), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (1C)” shall be inserted with effect from the 1st day of October, 2004;

(c) in sub-section (3),—

(i) after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (1C)” shall be inserted with effect from the 1st day of October, 2004;

(ii) the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that the person collecting tax on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this section shall, after paying the tax collected to the credit of the Central Government within the prescribed time, prepare quarterly statements for the period ending on the 30th June, the 30th September, the 31st December and the

31st March in each financial year and deliver or cause to be delivered to the prescribed income-tax authority, or the person authorised by such authority, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.”;

(d) in sub-section (4), the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that where any amount is collected in accordance with the provisions of this section on or after the 1st day of April, 2005 and paid under sub-section (3) to the credit of the Central Government, the amount of tax collected and specified in the statement referred to in the second proviso to sub-section (5) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected in the assessment made under this Act for the assessment year for which such income is assessable without the production of certificate.”;

(e) in sub-section (5),—

(i) for the word “buyer”, the words “buyer or licensee or lessee” shall be substituted with effect from the 1st day of October, 2004;

(ii) the following provisos shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that no certificate may be furnished in a case where tax has been collected in accordance with the foregoing provisions of this section on or after the 1st day of April, 2005:

Provided further that the prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) shall, within the prescribed time after the end of each financial year, prepare and deliver to the buyer referred to in sub-section (1) or, as the case may be, to the licensee or lessee referred to in sub-section (1C), a statement in the prescribed form specifying the amount of tax collected and such other particulars as may be prescribed.”;

(f) in sub-section (5A), with effect from the 1st day of October, 2004,—

(i) for the words, figures and letters “prepare half-yearly returns for the period ending on the 30th September and 31st March in each financial year”, the words “prepare within the prescribed time after the end of each financial year” shall be substituted;

(ii) for the words “prescribed income-tax authority”, the words “prescribed income-tax authority or such other authority or agency as may be prescribed” shall be substituted;

(iii) the following proviso shall be inserted, namely:—

“Provided that the Board may, if it considers necessary or expedient so to do, frame a scheme for the purposes of filing such returns with such other authority or agency referred to in this sub-section.”;

(g) for sub-sections (5B) and (5C), the following sub-sections shall be substituted with effect from the 1st day of April, 2005, namely:—

“(5B) Without prejudice to the provisions of sub-section (5A), any person collecting tax, other than in a case where the seller is a company, the Central Government or a State Government, may at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified by the Board in this behalf, by notification in

the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media (hereinafter referred to as the computer media) and in the manner as may be specified in that scheme:

Provided that where the person collecting tax is a company or the Central Government or a State Government, such person shall, in accordance with the provisions of this section, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.

(5C) Notwithstanding anything contained in any other law for the time being in force, a return filed on computer media shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings made thereunder, without further proof of production of the original, as evidence of any contents of the original or of any facts stated therein.

(5D) Where the Assessing Officer considers that the return delivered or caused to be delivered under sub-section (5B) is defective, he may intimate the defect to the person collecting tax and give him an opportunity of rectifying the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to deliver the return.”;

(h) in sub-section (9), with effect from the 1st day of October, 2004,—

(i) for the word “buyer”, the words “buyer or licensee or lessee” shall be substituted;

(ii) after the word, brackets and figure “sub-section (I)”, at both the places where they occur, the words, brackets, figure and letter “or sub-section (IC)” shall be inserted.

Amendment
of section
206CA.

51. In section 206CA of the Income-tax Act, after sub-section (2), the following proviso shall be inserted with effect from the 1st day of October, 2004, namely:—

“Provided that the provisions of this section shall not apply on or after the 1st day of October, 2004.”.

Amendment
of section
245RR.

52. In section 245RR of the Income-tax Act, for the words, brackets, figures and letter “under sub-section (I) of section 245R”, the words, brackets, figures and letter “under sub-section (I) of section 245Q” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 1998.

Amendment
of section
246A.

53. In section 246A of the Income-tax Act, in sub-section (I), in clause (a), in the opening portion, for the words “an order against the assessee”, the words, brackets, figures and letters “an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee” shall be substituted with effect from the 1st day of October, 2004.

Amendment
of section
253.

54. In section 253 of the Income-tax Act, in sub-section (I), after clause (b), the following clause shall be inserted with effect from the 1st day of October, 2004, namely:—

“(ba) an order passed by an Assessing Officer under sub-section (I) of section 115VZC; or.”.

55. After section 271F of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:—

Insertion of new section 271FA.

"271FA. If a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues."

Penalty for failure to furnish annual information return.

56. In section 272A of the Income-tax Act, in sub-section (2), after clause (j), the following clause shall be inserted with effect from the 1st day of April, 2005, namely:—

Amendment of section 272A.

"(k) to deliver or cause to be delivered a copy of the statement within the time specified in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C."

57. In section 272B of the Income-tax Act, in sub-section (2), after the word, brackets, figure and letter "sub-section (5A)", the words, brackets, figure and letter "or sub-section (5C)" shall be inserted with effect from the 1st day of April, 2005.

Amendment of section 272B.

58. In section 272BBB of the Income-tax Act, in sub-section (1), for the words "fails to comply", the words, figures and letters "fails to comply before the 1st day of October, 2004" shall be substituted with effect from the 1st day of October, 2004.

Amendment of section 272BBB.

59. In section 273B of the Income-tax Act, for the word, figures and letter "section 271F," the words, figures and letters "section 271F, section 271FA," shall be substituted with effect from the 1st day of April, 2005.

Amendment of section 273B.

60. After section 277 of the Income-tax Act, the following section shall be inserted with effect from the 1st day of October, 2004, namely:—

Insertion of new section 277A.

"277A. If any person (hereafter in this section referred to as the first person) wilfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Falsification of books of account or document, etc.

Explanation.—For the purposes of establishing the charge under this section, it shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act."

61. In section 278B of the Income-tax Act, after sub-section (2) and before the *Explanation*, the following sub-section shall be inserted with effect from the 1st day of October, 2004, namely:—

Amendment of section 278B.

"(3) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act."

Amendment
of section
279.

62. In Section 279 of the Income-tax Act, in sub-section (1), for the words and figures "section 277 or section 278", the words, figures and letter "section 277, section 277A or section 278" shall be substituted with effect from the 1st day of October, 2004.

Substitution
of new
section for
section
285BA.

Obligation to
furnish
annual
information
return.

63. For section 285BA of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2005, namely:—

285BA. (1) Any person, being—

- (a) an assessee; or
- (b) the prescribed person in the case of an office of Government; or
- (c) a local authority or other public body or association; or
- (d) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or 16 of 1908.
- (e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; or 59 of 1988.
- (f) the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898; or 6 of 1898.
- (g) the Collector referred to in clause (c) of section 3 of the Land Acquisition Act, 1894; or 1 of 1894.
- (h) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or 42 of 1956.
- (i) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934; or 2 of 1934.
- (j) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996, 22 of 1996.

who is responsible for registering, or, maintaining books of account or other documents containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return, in respect of such specified financial transaction which is registered or recorded by him during any financial year beginning on or after the 1st day of April, 2004 and information relating to which is relevant and required for the purposes of this Act, to the prescribed income-tax authority or such other authority or agency as may be prescribed.

(2) The annual information return referred to in sub-section (1) shall be furnished within the prescribed time after the end of such financial year, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

(3) For the purposes of sub-section (1), "specified financial transaction" means any—

- (a) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or
- (b) transaction for rendering any service; or
- (c) transaction under a works contract; or
- (d) transaction by way of an investment made or an expenditure incurred;

or

(e) transaction for taking or accepting any loan or deposit,

which may be prescribed:

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transactions:

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than fifty thousand rupees.

(4) Where the prescribed income-tax authority considers that the annual information return furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of one month or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to furnish the annual information return.

(5) Where a person who is required to furnish an annual information return under sub-section (1) has not furnished the same within the prescribed time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice and he shall furnish the annual information return within the time specified in the notice.

64. In the Thirteenth Schedule to the Income-tax Act, with effect from the 1st day of April, 2005,—

Amendment
of Thirteenth
Schedule.

(a) for the brackets, words, figures and letters “[See section 80-IC(2)]”, the brackets, words, figures and letters “[See sections 80-IB(4) and 80-IC(2)]” shall be substituted;

(b) after Part B, the following Part shall be inserted, namely:—

“PART C

FOR THE STATE OF JAMMU AND KASHMIR

S.No.	Article or thing
1.	Cigarettes/cigars of tobacco, manufactured tobacco and substitutes
2.	Distilled/brewed alcoholic drinks
3.	Aerated branded beverages and their concentrates”.

Wealth-tax

65. In section 35HA of the Wealth-tax Act, 1957, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of October, 2004, namely:—

Amendment
of section
35HA of Act
27 of 1957.

“(3) Where an offence under this Act has been committed by a person, being a company and such offence is punishable with imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1) or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.”.

CHAPTER IV

INDIRECT TAXES

*Customs*Amendment
of section 41.

66. In section 41 of the Customs Act, 1962 (hereinafter referred to as the Customs Act), 52 of 1962.
in sub-section (1), the proviso shall be omitted.

Insertion of
new section
122A.Adjudication
Procedure.

67. After section 122 of the Customs Act, the following section shall be inserted,
namely:—

“122A. (1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.”

Amendment
of section
128.

68. In section 128 of the Customs Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”

Amendment
of section
129A.

69. In section 129A of the Customs Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:—

“(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Customs under this sub-section.”

70. In section 129B of the Customs Act, after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment
of section
129B.

“(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”

71. In section 137 of the Customs Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment
of section
137.

“(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be specified by rules.”

72. In section 142 of the Customs Act, in sub-section (1), the following proviso shall be inserted at the end, namely:—

Amendment
of section
142.

“Provided that where the person (hereinafter referred to as predecessor), by whom any sum payable under this Act including the amount required to be paid to the credit of the Central Government under section 28B is not paid, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by the proper officer, after obtaining written approval from the Commissioner of Customs, for the purposes of recovering the amount so payable by such predecessor at the time of such transfer or otherwise disposal or change.”

73. In section 156 of the Customs Act, in sub-section (2), after clause (g), the following clause shall be inserted, namely:—

Amendment
of section
156.

“(h) the amount to be paid for compounding under sub-section (3) of section 137.”

74. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 83/2004-Customs (N.T.), dated the 30th June, 2004, published in the Official Gazette vide No.G.S.R. 393(E), dated the 30th June, 2004 (hereinafter referred to as the said notification) shall, for the purposes of hundred per cent. export-oriented undertakings, be deemed to be, and to have always been, for all purposes, in force retrospectively on and from the 11th day of May, 1982 and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

Validation of
certain
actions taken
by Central
Excise
Officers.

(a) any action taken or anything done by a Central Excise Officer appointed by the said notification as an officer of customs to discharge the duties of an officer of customs in respect of hundred per cent. export-oriented undertakings, on and from the 11th day of May, 1982 to 30th day of June, 2004, shall, for all purposes, be deemed to be, and to have always been, validly taken or done as if the appointment made by the said notification was in force at all material times;

(b) no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority against the Central Government or the Central Excise Officer appointed as an officer of customs by the said notification for any action taken or anything done in good faith during the discharge of his duties as an officer of customs in respect of hundred per cent. export-oriented undertakings during the period on and from the 11th day of May, 1982 to 30th day of June, 2004, as if the appointment made by the said notification was in force at all material times;

(c) recovery made of any amount of duty or interest or penalty or fine or other charges by or under the order or direction of the Central Excise Officer appointed as an officer of customs by the said notification during the period on and from the 11th day of May, 1982 to 30th day of June, 2004 shall be deemed to be valid, and to have always been, for all purposes, as validly and effectively, made as if the appointment made by the said notification was in force at all material times.

(2) For the purposes of sub-section (1), the Central Board of Excise and Customs shall have and shall be deemed to have always had the power to bring into force the said notification with retrospective effect as if the Central Board of Excise and Customs had the power to bring into force the said notification under section 4 of the Customs Act, 1962, retrospectively, at all material times. 52 of 1962.

(3) For the purposes of this section, the designations of the officers of customs and the Central Excise Officers as existed before the commencement of the Finance Act, 1995, shall be deemed to be the corresponding substituted designations as specified in the Tables respectively below section 50 and section 70 of the said Finance Act. 22 of 1995.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the said notification had not come retrospectively into force.

Explanation 2.—For the purposes of this section, “hundred per cent. export-oriented undertaking” shall have the meaning assigned to it in clause (ii) of *Explanation 2* to the proviso to clause (b) of section 3 of the Central Excise Act, 1944. 1 of 1944.

Customs tariff

Amendment
of section 3.

75. In section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), in sub-section (2), in clause (ii), the following amendments shall be made and shall be deemed to have been made on and from the 9th day of July, 2004, namely:— 51 of 1975.

(a) in sub-clause (d), the word “and”, occurring at the end, shall be omitted;

(b) after sub-clause (d), the following sub-clause shall be inserted, namely:—

“(dd) the Education Cess on imported goods referred to in section 94 of the Finance (No. 2) Act, 2004; and”.

Amendment
of section
9A.

76. In section 9A of the Customs Tariff Act, in sub-section (8), for the words “relating to non-levy, short-levy, refunds and appeals”, the words “relating to, the date for determination of rate of duty, non-levy, short-levy, refunds, interest, appeals, offences and penalties” shall be substituted.

Amendment
of section 9C.

77. In section 9C of the Customs Tariff Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.

(1B) Every application made before the Appellate Tribunal,—

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,
shall be accompanied by a fee of five hundred rupees.”.

Amendment
of First
Schedule.

78. In the First Schedule to the Customs Tariff Act,—

(i) in Chapter 11, in tariff items 1108 12 00, 1108 14 00, 1108 19 10 and 1108 19 90, for the entry in column (4) occurring against each of them, the entry “50%” shall be substituted;

(ii) in Chapter 19, in tariff item 1903 00 00, for the entry in column (4), the entry "50%" shall be substituted;

(iii) in Chapter 29, in tariff item 2922 42 20, for the entry in column (2), the entry "--- Monosodium glutamate" shall be substituted;

(iv) in Chapter 35, in tariff items 3505 10 10 and 3505 10 90, for the entry in column (4) occurring against each of them, the entry "50%" shall be substituted.

Excise

1 of 1944.

79. Section 9A of the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act) shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

Amendment of section 9A.

"(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed."

80. In section 11 of the Central Excise Act, the following proviso shall be inserted at the end, namely:—

Amendment of section 11.

"Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change."

81. After section 33 of the Central Excise Act, the following section shall be inserted, namely:—

Insertion of new section 33A.

"33A. (1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

Adjudication procedure.

(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding."

82. In section 35 of the Central Excise Act, after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment of section 35.

"(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal."

83. In section 35B of the Central Excise Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:—

Amendment of section 35B.

"(6) An appeal to the Appellate Tribunal shall be in the prescribed form and

shall be verified in the prescribed manner and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,
shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise under this sub-section.”

Amendment
of section
35C.

84. In section 35C of the Central Excise Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”

Amendment
of section 37.

85. In section 37 of the Central Excise Act, in sub-section (2),—

(a) after clause (ic), the following clause shall be inserted, namely:—

“(id) provide for the amount to be paid for compounding under sub-section (2) of section 9A;”;

(b) after clause (xvia), the following clause shall be inserted, namely:—

“(xviaa) provide for credit of service tax leviable under Chapter V of the Finance Act, 1994, paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods;”.

32 of 1994.

Amendment
of Third
Schedule.

86. In the Third Schedule to the Central Excise Act, against serial No. 91, in column (3), in the entry, the words “other than monochrome,” shall be omitted.

Validation of
certain actions
taken by
officers of
customs.

87. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 38/2001-Central Excise (N.T.), dated the 26th June, 2001, published in the Official Gazette vide No. G.S.R. 467(E), dated the 26th June, 2001 (hereinafter referred to as the principal notification), as amended by the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 32/2002-Central Excise (N.T.), dated the 17th September, 2002, published in the Official Gazette vide No. G.S.R. 655(E), dated the 17th September, 2002 (hereinafter referred to as the first amendment) and the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 1/2003-Central Excise (N.T.), dated the 13th January, 2003,

published in the Official Gazette *vide* No. G.S.R. 27(E), dated the 13th January, 2003 (hereinafter referred to as the second amendment) shall, for the purposes of hundred per cent. export-oriented undertakings, be deemed to be, and to have always been, for all purposes, in force retrospectively on and from the 11th day of May, 1982 and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

(a) any action taken or anything done by an officer of customs invested with the powers of a Central Excise Officer to discharge the duties of the Central Excise Officer in respect of hundred per cent. export-oriented undertakings, on and from the 11th day of May, 1982 to 13th day of January, 2003, by the first amendment and the second amendment to the principal notification, shall, for all purposes, be deemed to be, and to have always been, validly taken or done as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times;

(b) no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority against the Central Government or an officer of customs invested with powers of the Central Excise Officer, by the first amendment and the second amendment to the principal notification, for any action taken or anything done in good faith during the discharge of his duties as the Central Excise Officer in respect of hundred per cent. export-oriented undertakings during the period on and from the 11th day of May, 1982 to 13th day of January, 2003, as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times;

(c) recovery made of any amount of duty or interest or penalty or fine or other charges by or under the order or direction of an officer of customs invested with powers of the Central Excise Officer by the first amendment and the second amendment to the principal notification during the period on and from the 11th day of May, 1982 to 13th day of January, 2003 shall be deemed to be valid, and to have always been, for all purposes, as validly and effectively made as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times.

(2) For the purposes of sub-section (1), the Central Board of Excise and Customs shall have and shall be deemed to have always had the powers to bring into force the principal notification, the first amendment and the second amendment with retrospective effect as if the Central Board of Excise and Customs had the powers to bring into force the principal notification, the first amendment and the second amendment under clause (b) of section 2 of the Central Excise Act, 1944, retrospectively, at all material times.

1 of 1944.

22 of 1995.

(3) For the purposes of this section, the designations of the officers of customs and the Central Excise Officers as existed before the commencement of the Finance Act, 1995 shall be deemed to be the corresponding substituted designations as specified in the Tables respectively below section 50 and section 70 of the said Finance Act.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the principal notification as amended by the first amendment and the second amendment had not come retrospectively into force.

Explanation 2.—For the purposes of this section, “hundred per cent. export-oriented undertaking” shall have the meaning assigned to it in clause (ii) of *Explanation 2* to the proviso to clause (b) of section 3 of the Central Excise Act, 1944.

1 of 1944.

1 of 1944.

88. (1) In the CENVAT Credit Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944, in rule 3, in sub-rule (6), in clause (b), the *Explanation* shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in the Second Schedule, on and from the corresponding date mentioned in column (3) of that Schedule and, accordingly,

notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said *Explanation* shall be deemed to be, and to have always been, for all purposes, as validly and effectively, taken or done as if the said *Explanation* as amended by this sub-section had been in force at all material times.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944, retrospectively, at all material times.

1 of 1944.

(3) The CENVAT credit shall be allowed of such additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 which has been disallowed but which would not have been disallowed if the amendment made by sub-section (1) was in force at all material times.

58 of 1957.

(4) Recovery shall be made of such CENVAT credit of additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 which has been availed but which would not have been availed if the amendment made by sub-section (1) was in force at all material times and the provisions of CENVAT Credit Rules, 2002 relating to the recovery of CENVAT credit, along with interest, shall apply for the recovery made under this sub-section subject to the modification that the relevant date defined in section 11A of the Central Excise Act, 1944, shall, for the purposes of recovery under this sub-section, be deemed to be the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.

58 of 1957.

1 of 1944.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Explanation 2.—For the purposes of this section, the expression “CENVAT credit” has the meaning assigned to it in the CENVAT Credit Rules, 2002.

Central Excise Tariff

Amendment
of First
Schedule to
Act 5 of
1986.

89. In the First Schedule to the Central Excise Tariff Act, 1985,—

(i) in Chapter 50, in sub-heading Nos. 5004.11, 5004.90, 5005.10, 5005.20 and 5005.90, for the entry in column (4) occurring against each of them, the entry “8%” shall be substituted;

(ii) in Section XV, after NOTE 9, the following NOTE shall be inserted, namely:—

“10. In relation to the products of this Section, the process of drawing or redrawing a rod, wire or any other similar article, into wire shall amount to ‘manufacture’.”;

(iii) in Chapter 90, in sub-heading No. 9001.10, for the entry in column (4), the entry “8%” shall be substituted;

(iv) in Chapter 95, in sub-heading No. 9504.10, for the entry in column (4), the entry “8%” shall be substituted.

CHAPTER V

SERVICE TAX

Amendment
of Act 32 of
1994.

90. In the Finance Act, 1994,—

(a) in section 65,—

(i) after clause (3), the following clauses shall be inserted, namely:—

“(3a) “aircraft” has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934;

22 of 1934.

55 of 1994.

55 of 1994.

(3b) "aircraft operator" means any commercial concern which provides the service of transport of goods by aircraft;

(3c) "airport" has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994;

(3d) "airports authority" means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 and also includes any person having the charge of management of an airport or a civil enclave;";

(ii) for clause (12), the following clause shall be substituted, namely:—

“(12) “banking and other financial services” means—

(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, namely:—

(i) financial leasing services including equipment leasing and hire-purchase;

(ii) credit card services;

(iii) merchant banking services;

(iv) securities and foreign exchange (forex) broking;

(v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management;

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;

(vii) provision and transfer of information and data processing; and

(viii) other financial services, namely, lending; issue of pay order, demand draft, cheque, letter of credit and bill of exchange; providing bank guarantee, over draft facility, bill discounting facility, safe deposit locker, safe vaults; operation of bank accounts;

(b) foreign exchange broking provided by a foreign exchange broker other than those covered under sub-clause (a);";

(iii) for clause (19), the following clauses shall be substituted, namely:—

“(19) “business auxiliary service” means any service in relation to—

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client;

or

(iii) any customer care service provided on behalf of the client;

or

(iv) procurement of goods or services, which are inputs for the client; or

(v) production of goods on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944.

1 of 1944.

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause, "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems;

(19a) "business exhibition" means an exhibition,—

(a) to market; or

(b) to promote; or

(c) to advertise; or

(d) to showcase,

any product or service, intended for the growth in business of the producer or provider of such product or service, as the case may be;";

(iv) after clause (24), the following clause shall be inserted, namely:—

'(24a) "civil enclave" has the meaning assigned to it in clause (i) of section 2 of the Airports Authority of India Act, 1994;';

55 of 1994.

(v) clause (28) shall be omitted;

(vi) in clause (29), for the words "in relation to commissioning or installation", the words "in relation to erection, commissioning or installation" shall be substituted;

(vii) after clause (30), the following clause shall be inserted, namely:—

'(30a) "construction service" means—

(a) construction of new building or civil structure or a part thereof; or

(b) repair, alteration or restoration of, or similar services in relation to, building or civil structure,

which is—

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include road, airport, railway, transport terminal, bridge, tunnel, long distance pipeline and dam;";

(viii) after clause (39), the following clause shall be inserted, namely:—

‘(39a) “erection, commissioning or installation” means any service provided by a commissioning and installation agency in relation to erection, commissioning or installation of plant, machinery or equipment;’;

(ix) after clause (46), the following clause shall be inserted, namely:—

‘(46a) “forward contract” has the meaning assigned to it in clause (c) of section 2 of the Forward Contracts (Regulation) Act, 1952;’;

(x) after clause (50), the following clauses shall be inserted, namely:—

‘(50a) “goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988;

(50b) “goods transport agency” means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called;’;

(xi) after clause (55), the following clauses shall be inserted, namely:—

‘(55a) “intellectual property right” means any right to intangible property, namely, trade marks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright;

(55b) “intellectual property service” means,—

(a) transferring, whether permanently or otherwise; or

(b) permitting the use or enjoyment of,

any intellectual property right;’;

(xii) after clause (75), the following clauses shall be inserted, namely:—

‘(75a) “opinion poll” means any service designed to secure information on public opinion regarding social, economic, political or other issues;

(75b) “opinion poll agency” means any person engaged in providing any service in relation to opinion poll;’;

(xiii) after clause (76), the following clause shall be inserted, namely:—

‘(76a) “outdoor caterer” means a caterer engaged in providing services in connection with catering at a place other than his own;’;

(xiv) after clause (77), the following clauses shall be inserted, namely:—

‘(77a) “pandal or shamiana” means a place specially prepared or arranged for organising an official, social or business function;

(77b) “pandal or shamiana contractor” means a person engaged in providing any service, either directly or indirectly, in connection with the preparation, arrangement, erection or decoration of a pandal or shamiana, and includes the supply of furniture, fixtures, lights and lighting fittings, floor coverings and other articles for use therein;’;

(xv) after clause (86), the following clauses shall be inserted, namely:—

‘(86a) “programme” means any audio or visual matter, live or recorded, which is intended to be disseminated by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations;

74 of 1952.

59 of 1988.

(86b) "programme producer" means a commercial concern which produces a programme on behalf of another person;';

(xvi) after clause (89), the following clauses shall be inserted, namely:—

'(89a) "recognised association" has the meaning assigned to it in clause (j) of section 2 of the Forward Contracts (Regulation) Act, 1952; 74 of 1952.

(89b) "registered association" has the meaning assigned to it in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952;'; 74 of 1952.

(xvii) for clause (101), the following clause shall be substituted, namely:—

'(101) "stock-broker" means a person, who has either made an application for registration or is registered as a stock-broker or sub-broker, as the case may be, in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992;'; 15 of 1992.

(xviii) clause (103) shall be omitted;

(xix) after clause (104), the following clause shall be inserted, namely:—

'(104a) "survey and exploration of mineral" means geological, geophysical or other prospecting, surface or sub-surface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas;';

(xx) in clause (105),—

(a) in sub-clause (a), for the words "to an investor", the words "to any person" shall be substituted;

(b) in sub-clause (g), after the words "disciplines of engineering", the words "but not in the discipline of computer hardware engineering or computer software engineering" shall be inserted;

(c) for sub-clause (zm), the following sub-clause shall be substituted, namely:—

"(zm) to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to banking and other financial services;";

(d) sub-clause (zp) shall be omitted;

(e) in sub-clause (zs), for the words "to a customer, by a cable operator", the words "to any person, by a cable operator, including a multisystem operator," shall be substituted;

(f) in sub-clause (zx), for the words "in relation to life insurance business", the words "in relation to the risk cover in life insurance" shall be substituted;

(g) in sub-clause (zzd), for the words "commissioning or installation", the words "erection, commissioning or installation" shall be substituted;

(h) after sub-clause (zzl), the following sub-clauses shall be inserted, namely:—

"(zzm) to any person, by the airports authority or any person authorised by it, in an airport or a civil enclave;

(zzn) to any person, by an aircraft operator, in relation to transport of goods by aircraft;

(zzo) to an exhibitor, by the organiser of a business exhibition, in relation to business exhibition;

(zzp) to a customer, by a goods transport agency, in relation to transport of goods by road in a goods carriage;

(zzq) to any person, by a commercial concern, in relation to construction service;

(zzr) to any person, by the holder of intellectual property right, in relation to intellectual property service;

(zzs) to any person, by an opinion poll agency, in relation to opinion poll;

(zzt) to a client, by an outdoor caterer;

(zzu) to any person, by a programme producer, in relation to a programme;

(zzv) to a customer, by any person, in relation to survey and exploration of mineral;

(zzw) to a client, by a pandal or shamiana contractor in relation to a pandal or shamiana in any manner and also includes the services, if any, rendered as a caterer;

(zzx) to a customer, by a travel agent, in relation to the booking of passage for travel;

(zzy) to any person, by a member of a recognised association or a registered association, in relation to a forward contract;";

(xxi) for clause (115), the following clauses shall be substituted, namely:—

“(115) “tour operator” means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder;

(115a) “travel agent” means any person engaged in providing any service connected with booking of passage for travel, but does not include air travel agent and rail travel agent;”;

(b) for section 66, the following section shall be substituted, namely:—

“66. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten per cent. of the value of the taxable services referred to in sub-clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zp), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz), (zza), (zzb), (zzc), (zzd), (zze), (zzf), (zzg), (zzh), (zzi), (zzj), (zzk), (zzl), (zzm), (zzn), (zzo), (zzp), (zzq), (zzr), (zzs), (zzt), (zzu), (zzv), (zzw), (zzx) and (zzy) of clause (105) of section 65 and collected in such manner as may be prescribed.”;

Charge of service tax.

(c) in section 67,—

(a) the *Explanation* shall be numbered as *Explanation 1*, and in the *Explanation 1* as so numbered,—

(i) in clause (vi), the word “and” occurring at the end shall be omitted;

(ii) for clause (vii), the following clauses shall be substituted, namely:—

“(vii) the cost of parts or other material, if any, sold to the customer during the course of providing erection, commissioning or installation service; and

(viii) interest on loans.”;

(b) after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“Explanation 2.— Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.”;

(d) sections 71 and 72 shall be omitted;

(e) for section 73, the following section shall be substituted, namely:—

‘73. (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words “one year”, the words “five years” had been substituted.

Explanation.—Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

(2) The Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

Provided that the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise may determine the amount of short-payment of service tax or erroneously refunded service tax, if any,

Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.

which in his opinion has not been paid by such person and, then, the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation.—For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise, but for this sub-section.

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.

(5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.

(6) For the purposes of this section, "relevant date" means,—

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid—

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.;

(f) in section 74,—

(i) in sub-section (4), for the words "an assessment or reducing a refund or otherwise increasing the liability of the assessee", the words "the liability of the assessee or reducing a refund" shall be substituted;

(ii) in sub-section (6), for the word "assessment", the words "liability of an assessee or increasing the refund" shall be substituted;

(iii) in sub-section (7), for the word "assessment", the words "liability of the assessee" shall be substituted;

(g) in section 75, for the words "at the rate of fifteen per cent. per annum", the words "at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette," shall be substituted;

(h) section 75A shall be omitted;

(i) in section 76, for the words "one hundred rupees", the words "one hundred rupees for every day during which such failure continues" shall be substituted;

(j) for section 77, the following section shall be substituted, namely:—

"77. Whoever contravenes any of the provisions of this Chapter or any rule made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to an amount not exceeding one thousand rupees.";

(k) in section 78, for the portion beginning with the words "If the Assistant Commissioner" and ending with the words "value of such taxable service:", the following shall be substituted, namely:—

"Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:";

(l) section 79 shall be omitted;

(m) in section 80, for the words and figures "section 77, section 78 or section 79", the words and figures "section 77 or section 78" shall be substituted;

(n) section 81 shall be omitted;

(o) in section 85, in sub-section (1), the words and figures "section 71, section 72 or" shall be omitted;

(p) in section 86, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:—

"(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the

Penalty for
contravention
of any
provision for
which no
penalty is
provided

appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

(6A) Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, under this sub-section.”

(g) in section 94, in sub-section (2), for clause (f), the following clauses shall be substituted, namely:—

“(f) provisions for determining export of taxable services;

(g) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;

(h) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India; and

(i) any other matter which by this Chapter is to be, or may be, prescribed.”;

(r) in section 95, after sub-section (1A), the following sub-section shall be inserted, namely:—

“(1B) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2004, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.”.

CHAPTER VI

EDUCATION CESS

91. (1) Without prejudice to the provisions of sub-section (11) of section 2, there shall be levied and collected, in accordance with the provisions of this Chapter as surcharge for purposes of the Union, a cess to be called the Education Cess, to fulfil the commitment of the Government to provide and finance universalised quality basic education.

Education
Cess.

(2) The Central Government may, after due appropriation made by Parliament by law in this behalf, utilise, such sums of money of the Education Cess levied under sub-section (11) of section 2 and this Chapter for the purposes specified in sub-section (1), as it may consider necessary.

92. The words and expressions used in this Chapter and defined in the Central Excise Act, 1944, the Customs Act, 1962 or Chapter V of the Finance Act, 1994, shall have the meanings respectively assigned to them in those Acts or Chapter, as the case may be.

Definition.

1 of 1944.
52 of 1962.
32 of 1994.

Education
Cess on
excisable
goods.

93. (1) The Education Cess levied under section 91, in the case of goods specified in the First Schedule to the Central Excise Tariff Act, 1985, being goods manufactured or produced; shall be a duty of excise (in this section referred to as the Education Cess on excisable goods), at the rate of two per cent., calculated on the aggregate of all duties of excise (including special duty of excise or any other duty of excise but excluding Education Cess on excisable goods) which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), under the provisions of the Central Excise Act, 1944 or under any other law for the time being in force. 5 of 1986.

(2) The Education Cess on excisable goods shall be in addition to any other duties of excise chargeable on such goods, under the Central Excise Act, 1944 or any other law for the time being in force. 1 of 1944.

(3) The provisions of the Central Excise Act, 1944 and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Central Excise Act, 1944 or the rules, as the case may be. 1 of 1944.

Education
Cess on
imported
goods.

94. (1) The Education Cess levied under section 91, in the case of goods specified in the First Schedule to the Customs Tariff Act, 1975, being goods imported into India, shall be a duty of customs (in this section referred to as the Education Cess on imported goods), at the rate of two per cent., calculated on the aggregate of duties of customs which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), under section 12 of the Customs Act, 1962 and any sum chargeable on such goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including— 51 of 1975.

(a) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975; 51 of 1975.

(b) the countervailing duty referred to in section 9 of the Customs Tariff Act, 1975; 51 of 1975.

(c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act, 1975; and 51 of 1975.

(d) the Education Cess on imported goods.

(2) The Education Cess on imported goods shall be in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force. 52 of 1962.

(3) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods under the Customs Act, 1962 or the rules or the regulations, as the case may be. 52 of 1962.

Education
Cess on
taxable
services.

95. (1) The Education Cess levied under section 91, in the case of all services which are taxable services, shall be a tax (in this section referred to as the Education Cess on taxable services) at the rate of two per cent., calculated on the tax which is levied and collected under section 66 of the Finance Act, 1994. 32 of 1994.

(2) The Education Cess on taxable services shall be in addition to the tax chargeable on such taxable services, under Chapter V of the Finance Act, 1994. 32 of 1994.

(3) The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules, as the case may be. 32 of 1994.

CHAPTER VII

SECURITIES TRANSACTION TAX

96. (1) This Chapter extends to the whole of India.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable securities transactions entered into on or after the commencement of this Chapter.

Extent,
commence-
ment and
application.

97. In this Chapter, unless the context otherwise requires,—

Definitions.

43 of 1961.

(1) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961;

(2) "Assessing Officer" means the Income-tax Officer or Assistant Commissioner of Income-tax or Deputy Commissioner of Income-tax or Joint Commissioner of Income-tax or Additional Commissioner of Income-tax who is authorised by the Board to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Chapter;

54 of 1963.

(3) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963;

42 of 1956.

(4) "derivative" has the meaning assigned to it in clause (aa) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(5) "equity oriented fund" means a fund—

(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than fifty per cent. of the total proceeds of such fund; and

(ii) which has been set up under a scheme of a Mutual Fund:

Provided that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

43 of 1961.

(6) "Mutual Fund" means a Mutual Fund specified under clause (23D) of section 10 of the Income-tax Act, 1961;

42 of 1956.

(7) "option in securities" has the meaning assigned to it in clause (d) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(8) "option premium" means the premium payable by the purchaser of an "option in securities" at the time of such purchase;

(9) "prescribed" means prescribed by rules made by the Board under this Chapter;

42 of 1956.

(10) "recognised stock exchange" shall have the same meaning as in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(11) "securities transaction tax" means tax leviable on the taxable securities transactions under the provisions of this Chapter;

(12) "strike price" means the price at which the "option in securities" may be exercised on the expiry date of such option;

(13) "taxable securities transaction" means a transaction of—

(a) purchase or sale of an equity share in a company or a derivative or a unit of an equity oriented fund, entered into in a recognised stock exchange; or

(b) sale of a unit of an equity oriented fund to the Mutual Fund;

(14) words and expressions used but not defined in this Chapter and defined in the Securities Contracts (Regulation) Act, 1956, the Income-tax Act, 1961 or the rules made thereunder, shall apply, so far as may be, in relation to securities transaction tax.

42 of 1956.
43 of 1961.

Charge of
securities
transaction
tax.

98. On and from the commencement of this Chapter, there shall be charged a securities transaction tax in respect of the taxable securities transaction specified in column (2) of the Table below, at the rate specified in the corresponding entry in column (3) of the said Table, on the value of such transaction and such tax shall be payable by the purchaser or the seller, specified in the corresponding entry in column (4) of the said Table:

TABLE

Sl. No.	Taxable securities transaction	Rate	Payable by
(1)	(2)	(3)	(4)
1	Purchase of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such purchase is entered into in a recognised stock exchange; and (b) the contract for the purchase of such share or unit is settled by the actual delivery or transfer of such share or unit.	0.075 per cent.	Purchaser
2	Sale of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such sale is entered into in a recognised stock exchange; and (b) the contract for the sale of such share or unit is settled by the actual delivery or transfer of such share or unit.	0.075 per cent.	Seller
3	Sale of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such sale is entered into in a recognised stock exchange; and (b) the contract for the sale of such share or unit is settled otherwise than by the actual delivery or transfer of such share or unit.	0.015 per cent.	Seller
4	Sale of a derivative, where the transaction of such sale is entered into in a recognised stock exchange.	0.01 per cent.	Seller
5	Sale of a unit of an equity oriented fund to the Mutual Fund.	0.15 per cent.	Seller

Value of
taxable
securities
transaction.

99. The value of taxable securities transaction,—

(a) in the case of a taxable securities transaction relating to a derivative, being “option in securities”, shall be the aggregate of the strike price and the option premium of such “option in securities”;

(b) in the case of a taxable securities transaction relating to a derivative, being "futures", shall be the price at which such "futures" is traded; and

(c) in the case of any other taxable securities transaction, shall be the price at which such securities are purchased or sold:

Provided that the Board may, having regard to the manner in which taxable securities transactions are settled in a recognised stock exchange or such other factors which may be relevant for the purposes of determining the price of such securities, specify, by rules made by it, the method of determining the price of such securities for the purposes of this clause.

100. (1) Every recognised stock exchange shall collect the securities transaction tax from every person, being a purchaser or a seller, as the case may be, who enters into a taxable securities transaction in that stock exchange, at the rates specified in section 98.

Collection and recovery of securities transaction tax.

(2) The prescribed person in the case of every Mutual Fund shall collect the securities transaction tax from every person who sells a unit to that Mutual Fund, at the rate specified in section 98.

(3) The securities transaction tax collected during any calendar month in accordance with the provisions of sub-section (1) or sub-section (2), shall be paid by every recognised stock exchange or by the prescribed person in the case of every Mutual Fund, as the case may be, to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

(4) Any recognised stock exchange or the prescribed person in the case of any Mutual Fund, who fails to collect the tax in accordance with the provisions of sub-section (1) or sub-section (2), shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

101. (1) Every recognised stock exchange or the prescribed person in the case of every Mutual Fund (hereafter in this Chapter referred to as assessee) shall, within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered to the Assessing Officer or to any other authority or agency authorised by the Board in this behalf, a return in such form and verified in such manner and setting forth such particulars as may be prescribed, in respect of all taxable securities transactions entered into during such financial year in that stock exchange or, as the case may be, in respect of all taxable securities transactions, being sale of units to such Mutual Fund during such financial year.

Recognised stock exchange or Mutual Fund to furnish prescribed return.

(2) Where any assessee fails to furnish the return under sub-section (1) within the prescribed time, the Assessing Officer may issue a notice to such assessee and serve it upon him, requiring him to furnish the return in the prescribed form and verified in the prescribed manner setting forth such particulars within such time as may be prescribed.

(3) Any assessee who has not furnished the return within the time allowed under sub-section (1) or sub-section (2), or having furnished a return under sub-section (1) or sub-section (2), discovers any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

102. (1) For the purposes of making an assessment under this Chapter, the Assessing Officer may serve on any assessee, who has furnished a return under section 101 or upon whom a notice has been served under sub-section (2) of section 101 (whether a return has been furnished or not), a notice requiring him to produce or cause to be produced on a date to be specified therein such accounts or documents or other evidence as the Assessing Officer may require for the purposes of this Chapter and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

Assessment.

(2) The Assessing Officer, after considering such accounts, documents or other evidence, if any, as he has obtained under sub-section (1) and after taking into account any other relevant material which he has gathered, shall, by an order in writing, assess the value of taxable securities transactions during the relevant financial year and determine the amount of securities transaction tax payable or refundable on the basis of such assessment:

Provided that no assessment shall be made under this sub-section after the expiry of two years from the end of the relevant financial year.

(3) Every assessee, in case any amount is refunded to it on assessment under sub-section (2), shall, within such time as may be prescribed, refund such amount to the concerned person from whom such amount was collected.

Rectification
of mistake.

103. (1) With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any order passed by him under the provisions of this Chapter within one year from the end of the financial year in which the order sought to be amended was passed.

(2) Where any matter has been considered and decided in any proceeding by way of appeal relating to an order referred to in sub-section (1), the Assessing Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the Assessing officer may—

(a) make an amendment under sub-section (1) of his own motion; or

(b) make such amendment if any mistake is brought to his notice by the assessee.

(4) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the Assessing Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(5) Where an amendment is made under this section, an order shall be passed in writing by the Assessing Officer.

(6) Subject to the other provisions of this Chapter, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall make any refund, which may be due to such assessee.

(7) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Assessing Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

Interest on
delayed
payment of
securities
transaction
tax.

104. Every assessee who fails to credit the securities transaction tax or any part thereof as required under section 100, to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one per cent. of such tax for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

Penalty for
failure to
collect or pay
securities
transaction
tax.

105. Any assessee who—

(a) fails to collect the whole or any part of the securities transaction tax as required under section 100; or

(b) having collected the securities transaction tax, fails to pay such tax to the credit of the Central Government in accordance with the provisions of sub-section (3) of that section, shall be liable to pay,—

(i) in the case referred to in clause (a), in addition to paying the tax in accordance with the provisions of sub-section (4) of that section, or interest, if any, in accordance with the provisions of section 104, by way of a penalty, a sum equal to the amount of securities transaction tax that he failed to collect; and

(ii) in the case referred to in clause (b), in addition to paying the tax in accordance with the provisions of sub-section (3) of that section and interest in accordance with the provisions of section 104, by way of penalty, a sum of one thousand rupees for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of securities transaction tax that it failed to pay.

106. If an assessee fails to furnish in due time the return which it is required to furnish under sub-section (1) of section 101 on by notice given under sub-section (2) of that section, it shall be liable to pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

Penalty for failure to furnish prescribed return.

107. If the Assessing Officer in the course of any proceedings under this Chapter is satisfied that any person has failed to comply with a notice under sub-section (1) of section 102, he may direct that such person shall pay, by way of penalty, in addition to any securities transaction tax and interest, if any, payable by him, a sum of ten thousand rupees for each such failure.

Penalty for failure to comply with notice.

108. Notwithstanding anything contained in the provisions of section 105 or section 106 or section 107, no penalty shall be imposed for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure:

Penalty not to be imposed in certain cases.

Provided that no order imposing a penalty under this Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

43 of 1961.

109. The provisions of the following sections of the Income-tax Act, 1961, as in force from time to time, shall apply, so far as may be, in relation to securities transaction tax as they apply in relation to income-tax:—

Application of certain provisions of Act 43 of 1961.

120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293.

110. (1) Any assessee aggrieved by any assessment order passed by the Assessing Officer under section 102 or any order under section 103, or denying his liability to be assessed under this Chapter, or by an order levying penalty under this Chapter, may appeal to the Commissioner of Income-tax (Appeals) within thirty days from the date of receipt of the order of the Assessing Officer.

Appeals to Commissioner of Income-tax (Appeals).

(2) Every appeal under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of one thousand rupees.

43 of 1961.

(3) Where an appeal has been filed under the provisions of sub-section (1), the provisions of sections 249 to 251 of the Income-tax Act, 1961, shall, as far as may be, apply.

111. (1) Any assessee aggrieved by an order passed by a Commissioner of Income-tax (Appeals) under section 110 may appeal to the Appellate Tribunal against such order.

Appeals to the Appellate Tribunal.

(2) The Commissioner of Income-tax may, if he objects to any order passed by the Commissioner of Income-tax (Appeals) under section 110, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is received by the assessee, or by the Commissioner of Income-tax, as the case may be.

(4) Every appeal under sub-section (1) or sub-section (2) shall be in the prescribed form and shall be verified in the prescribed manner and in the case of an appeal filed under sub-section (1) shall be accompanied by a fee of one thousand rupees.

(5) Where an appeal has been filed before the Appellate Tribunal under sub-section (1) or sub-section (2), the provisions of sections 252 to 255 of the Income-tax Act, 1961, shall, as far as may be, apply. 43 of 1961.

False statement in verification, etc.

112. (1) If a person makes a statement in any verification under this Chapter or any rule made thereunder, or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and with fine.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sub-section (1) shall be deemed to be non-cognizable within the meaning of that Code. 2 of 1974.

Institution of proceedings.

113. A person shall not be proceeded against for any offence under section 112 except with the previous sanction of the Chief Commissioner of Income-tax.

Power to make rules.

114. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which the return shall be delivered or caused to be delivered to the Assessing Officer or to any other agency and the form and the manner in which such return shall be furnished under sub-section (1) or sub-section (2) of section 101;

(b) the time within which the return shall be furnished on receipt of notice under sub-section (2) of section 101;

(c) the form in which an appeal under section 110 or section 111 may be filed and the manner in which they may be verified;

(d) any other matter which by this Chapter is to be, or may be, prescribed.

(3) Every rule made under this Chapter and every notification issued under this Chapter shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Power to remove difficulties.

115. (1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Chapter come into force.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

CHAPTER VIII

MISCELLANEOUS

116. In section 3 of the Government Savings Banks Act, 1873, for clause (b), the following clauses shall be substituted, namely:—

Amendment
of Act 5 of
1873.

‘(b) “Government Savings Bank” means—

(i) a Post Office Savings Bank; or

(ii) a banking company, or any other company or institution, as the Central Government may, by notification in the Official Gazette, specify, for the purposes of this Act;

(bb) “Secretary” means,—

(i) in the case of a Post Office Savings Bank, the Postmaster-General appointed for the area in which the Post Office Savings Bank is situated, or any officer of the Government as the Central Government may, by general or special order, specify in this behalf; and

(ii) in the case of a banking company or other company or institution, an officer of that banking company or other company or institution, as the case may be, or any officer of the Government or any other person as the Central Government may, by general or special order, specify in this behalf;.”

117. In the Indian Stamp Act, 1899,—

Amendment
of Act 2 of
1899.

(i) in section 2, after clause (25), the following clause shall be inserted, namely:—

‘(26) “Stamp” means any mark, seal or endorsement by any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for the purposes of duty chargeable under this Act.’;

(ii) in section 9, in sub-section (1), in clause (b), after the words “consolidation of duties”, the words “of policies of insurance and” shall be inserted;

(iii) in Schedule I, in Article No. 53, in the first column, for the words “five hundred rupees”, the words “five thousand rupees” shall be substituted.

74 of 1956.

118. In section 8 of the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Sales Tax Act),—

Amendment
of section 8.

(a) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.”;

(b) in sub-section (8), for the words, brackets and figures “authority referred to in sub-section (6) a declaration in the prescribed manner on the prescribed form obtained from the authority referred to in sub-section (5)”, the following shall be substituted, namely:—

Amendment
of Chapter VI.

"prescribed authority referred to in sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6)".

Amendment
of Chapter VI.

119. In Chapter VI of the Central Sales Tax Act, as directed to be inserted by section 3 of the Central Sales Tax (Amendment) Act, 2001, and as it stands amended by the Finance Act, 2003, with effect from the commencement of the Central Sales Tax (Amendment) Act, 2001,—

41 of 2001
32 of 2003

(a) in section 19, in sub-section (1), for the words, figures and letter "section 6A or section 9", the words, figures and letter "section 6A read with section 9" shall be substituted;

(b) in section 20, in sub-section (1), for the words, figures and letter "section 6A or section 9", the words, figures and letter "section 6A read with section 9" shall be substituted;

(c) in section 21, in sub-section (3), in the first proviso, for the words "also to the State Government", the words "also to each State Government" shall be substituted;

(d) in section 22, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The Authority may grant stay of the operation of the order of the assessing authority against which the appeal is filed before it or order the pre-deposit of the tax before entertaining the appeal and while granting such stay or making such order for the pre-deposit of the tax, the Authority shall have regard, if the assessee has already made pre-deposit of the tax under the general sales tax law of the State concerned, to such pre-deposit."

(e) in section 25, for the words "every appeal", the words "any proceeding" shall be substituted;

(f) in section 26, for the words "the assessing authorities", the words "each State Government concerned, the assessing authorities" shall be substituted.

Amendment of
section 4 of Act
39 of 2003.

120. In section 4 of the Fiscal Responsibility and Budget Management Act, 2003, for the figures, letters and word "31st March, 2008", at both the places where they occur, the figures, letters and word "31st March, 2009" shall be substituted.

Repeal of
section 2 of Act
13 of 2004.

121. Section 2 of the Finance Act, 2004 is hereby repealed and shall be deemed never to have been enacted.

THE FIRST SCHEDULE

(See section 2)

PART I

INCOME-TAX

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|--|--|
| (1) where the total income does not exceed Rs. 50,000 | Nil; |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000 | 10 per cent. of the amount by which the total income exceeds Rs. 50,000; |
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 60,000; |
| (4) where the total income exceeds Rs. 1,50,000 | Rs. 19,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall,—

(i) in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding eight hundred and fifty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax;

(ii) in the case of every person, other than those mentioned in item (i), be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that in case of persons mentioned in item (i) above having a total income exceeding eight hundred and fifty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed that total amount payable as income-tax on a total income of eight hundred and fifty thousand rupees by more than the amount of income that exceeds eight hundred and fifty thousand rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|---|---|
| (1) where the total income does not exceed Rs.10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs.10,000 but does not exceed Rs. 20,000 | Rs.1,000 plus 20 per cent. of the amount by which the total income exceeds Rs.10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income	35 per cent.
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Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph D

In the case of every local authority,—

Rate of income-tax

30 per cent.

On the whole of the total income

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company

35 per cent. of the total income;

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

50 per cent.

(ii) on the balance, if any, of the total income

40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

PART II

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the deduction at the following rates:—

	Rate of income-tax
1. In the case of a person other than a company—	
(a) where the person is resident in India—	
(i) on income by way of interest other than "Interest on securities"	10 per cent.;
(ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(iii) on income by way of winnings from horse races	30 per cent.;
(iv) on income by way of insurance commission	10 per cent.;
(v) on income by way of interest payable on—	10 per cent.;
(A) any debentures or securities other than a security of the Central or State Government for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	
(B) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder	
(vi) on any other income	20 per cent.;
(b) where the person is not resident in India—	
(i) in the case of a non-resident Indian—	
(A) on any investment income	20 per cent.;
(B) on income by way of long-term capital gains referred to in section 115E	10 per cent.;
(C) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10]	20 per cent.;
(D) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;
(E) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(F) on income by way of winnings from horse races	30 per cent.;
(G) on the whole of the other income	30 per cent.;
(ii) in the case of any other person—	
(A) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;
(B) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(C) on income by way of winnings from horse races	30 per cent.;
(D) on income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10]	20 per cent.;
(E) on the whole of the other income	30 per cent.

2. In the case of a company—

(a) where the company is a domestic company—

- (i) on income by way of interest other than "Interest on securities" 20 per cent.;
- (ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;
- (iii) on income by way of winnings from horse races 30 per cent.;
- (iv) on any other income 20 per cent.;

(b) where the company is not a domestic company—

- (i) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;
- (ii) on income by way of winnings from horse races 30 per cent.;
- (iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency 20 per cent.;

(iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976 where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India —

(A) where the agreement is made before the 1st day of June, 1997 30 per cent.;

(B) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;

(C) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;

- (C) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;
- (vii) on income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10] 20 per cent.;
- (viii) on any other income 40 per cent.

Explanation.—For the purpose of item 1(b)(i) of this Part, “investment income” and “non-resident Indian” shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

Surcharge on income-tax

The amount of income-tax deducted in accordance with the provisions of—

(A) item 1 of this Part, shall be increased by a surcharge, for purposes of the Union, calculated,—

(i) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds eight hundred and fifty thousand rupees;

(ii) in the case of every co-operative society, firm and local authority, at the rate of two and one-half per cent. of such tax;

(iii) in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such tax.

(B) item 2 of this Part, shall be increased by a surcharge, for purposes of the Union, calculated at the rate of two and one-half per cent. of such income-tax.

PART III

RATES FOR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM INCOME CHARGEABLE UNDER THE HEAD “SALARIES” AND COMPUTING “ADVANCE TAX”

In cases in which income-tax has to be charged under sub-section (4) of section 172 of the Income-tax Act or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or deducted from, or paid on, from income chargeable under the head “Salaries” under section 192 of the said Act or in which the “advance tax” payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, “advance tax” [not being “advance tax” in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or section or surcharge on such “advance tax” in respect of any income chargeable to tax under section 115A or section 115AB or section 115AC or section 115ACA or section 115AD or section 115B or section 115BB or section 115BBA or section 115E or section 115JB] shall be charged, deducted or computed at the following rate or rates:—

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|--|--|
| (1) where the total income does not exceed Rs. 50,000 | Nil; |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000 | 10 per cent. of the amount by which the total income exceeds Rs. 50,000; |
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 60,000; |
| (4) where the total income exceeds Rs. 1,50,000 | Rs. 19,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 111A or section 112 shall,—

(i) in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding eight hundred and fifty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIIIA, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax;

(ii) in the case of every person, other than those mentioned in item (i), be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax :

Provided that in case of persons mentioned in item (i) above having a total income exceeding eight hundred and fifty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of eight hundred and fifty thousand rupees by more than the amount of income that exceeds eight hundred and fifty thousand rupees.

Paragraph B

In the case of every co-operative society,—

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 111A or section 112, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income	35 per cent.
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Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income	30 per cent.
----------------------------------	--------------

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 111A or section 112, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company

35 per cent. of the total income;

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

50 per cent.

(ii) on the balance, if any, of the total income

40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

PART IV

[See section 2(12)(c)]

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

Rule 1.—Agricultural income of the nature referred to in sub-clause (a) of clause (1A) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from other sources" and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly:

Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

Rule 2.—Agricultural income of the nature referred to in sub-clause (b) or sub-clause (c) of clause (1A) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

Rule 3.—Agricultural income of the nature referred to in sub-clause (c) of clause (1A) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

Rule 4.—Notwithstanding anything contained in any other provisions of these rules, in a case—

(a) where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee;

(b) where the assessee derives income from sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, re-milled crepe, smoked blanket crepe or flat bark crepe) of technically specified block rubbers manufactured or processed by him from rubber plants grown by him in India, such income shall be computed in accordance with rule 7A of the Income-tax Rules, 1962, and sixty-five per cent. of such income shall be regarded as the agricultural income of the assessee;

(c) where the assessee derives income from sale of coffee grown and manufactured by him in India, such income shall be computed in accordance with rule 7B of the Income-tax Rules, 1962, and sixty per cent. or seventy-five per cent., as the case may be, of such income shall be regarded as the agricultural income of the assessee.

Rule 5.—Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) but has any agricultural income, then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

Rule 6.—Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income:

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

Rule 7.—Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

Rule 8.—(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2004, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2002 or the 1st day of April, 2003,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2003,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2003,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2004.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2005, or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004, is a loss, then, for the purposes of sub-section (10) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2003 or the 1st day of April, 2004,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2003, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2004,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2004,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2005.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (1) or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this Rule, no loss which has not been determined by the Assessing Officer under the provisions of these Rules or the Rules contained in Part IV of the First Schedule to the Finance (No. 2) Act, 1996 (33 of 1996), or of the First Schedule to the Finance Act, 1997 (26 of 1997), or of the First Schedule to the Finance (No. 2) Act, 1998 (21 of 1998), or of the First Schedule to the Finance Act, 1999 (27 of 1999), or of the First Schedule to the Finance Act, 2000 (10 of 2000), or of the First Schedule to the Finance Act, 2001 (14 of 2001), or of the First Schedule to the Finance Act, 2002 (20 of 2002), or of the First Schedule to the Finance Act, 2003 (32 of 2003), shall be set off under sub-rule (1) or, as the case may be, sub-rule (2).

Rule 9. – Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be *nil*.

Rule 10. – The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

Rule 11. – For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.

THE SECOND SCHEDULE

[See section 78(1)]

Provision of the CENVAT Credit Rules, 2002 to be amended	Amendment	Date of effect of amendment
(1)	(2)	(3)
<i>Explanation to clause (b) of sub-rule (6) of rule 3.</i>	In the CENVAT Credit Rules, 2002, in rule 3, in sub-rule (6), in clause (b), for the <i>Explanation</i> , the following <i>Explanation</i> shall be substituted, namely:— " <i>Explanation.</i> —For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);".	1st March, 2003.

Sd/-

SHRI. T. K. VISWANATHAN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT
Sachivalaya, Gandhinagar, 23rd November, 2004.

No. RPB/40/2004/Ord.4-04/E :- The Following Ordinance promulgated by the President and published in the Gazette of India, Extra-Ordinary, Part II, Section I, dated the 12th October, 2004 is republished for general information :-

GOVERNMENT OF INDIA,

MINISTRY OF LAW, AND JUSTICE
(Legislative Department),

New Delhi, 12th October, 2004/Asvina, 20, 1926 (Saka)

THE SECURITIES LAWS (AMENDMENT) ORDINANCE, 2004

NO. 4 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

CHAPTER I PRELIMINARY

1.(1) This Ordinance may be called the Securities Laws (Amendment) Ordinance, 2004.

Short title
and com-
mencement.

(2) It shall come into force at once.

CHAPTER II

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

Amendment of
section 2.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as the principal Act),— 42 of 1956.

(i) clause (aa) shall be re-lettered as clause (ac) thereof and before the clause (ac) as so re-lettered, the following clauses shall be inserted, namely:—

“(aa) “corporatisation” means the succession of a recognised stock exchange, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another stock exchange, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society; 21 of 1860.

(ab) “demutualisation” means the segregation of ownership and management from the trading rights of the members of a recognised stock exchange in accordance with a scheme approved by the Securities and Exchange Board of India;

(ii) clause (ga) shall be re-lettered as clause (gb) thereof and before the clause (gb) as so re-lettered, the following clause shall be inserted, namely:—

“(ga) “scheme” means a scheme for corporatisation or demutualisation of a recognised stock exchange which may provide for—

(i) the issue of shares for a lawful consideration and provision of trading rights in lieu of membership cards of members of a recognised stock exchange;

(ii) the restrictions on voting rights;

(iii) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised stock exchange, legal proceedings by, or against, the recognised stock exchange, whether in the name of the recognised stock exchange or any trustee or otherwise and any permission given to, or by, the recognised stock exchange;

(iv) the transfer of employees of a recognised stock exchange to another recognised stock exchange;

(v) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised stock exchange;”;

(iii) in clause (h), after sub-clause (ic), the following sub-clause shall be inserted, namely:—

“(id) units or any other such instrument issued to the investors under any mutual fund scheme;”;

(iv) for clause (j), the following clause shall be substituted, namely:—

“(j) “stock exchange” means—

(a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

1 of 1956.

(b) a body corporate incorporated under the Companies Act, 1956 whether under a scheme of corporatisation and demutualisation or otherwise,

for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities;.

3. After section 4 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 4A and 4B.

4A. On and from the appointed date, all recognised stock exchanges (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 4B:

Corporatisation and demutualisation of stock exchanges.

Provided that the Securities and Exchange Board of India may, if it is satisfied that any recognised stock exchange was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, specify another appointed date in respect of that recognised stock exchange and such recognised stock exchange may continue as such before such appointed date.

Explanation.—For the purposes of this section, “appointed date” means the date which the Securities and Exchange Board of India may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognised stock exchanges.

4B. (1) All recognised stock exchanges referred to in section 4A shall, within such time as may be specified by the Securities and Exchange Board of India, submit a scheme for corporatisation and demutualisation for its approval:

Procedure for corporatisation and demutualisation.

Provided that the Securities and Exchange Board of India, may, by notification in the Official Gazette, specify name of the recognised stock exchange, which had already been corporatised and demutualised, and such stock exchange shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Securities and Exchange Board of India may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Securities and Exchange Board of India if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by—

(a) the Securities and Exchange Board of India in the Official Gazette;

(b) the recognised stock exchange in such two daily newspapers circulating in India, as may be specified by the Securities and Exchange Board of India,

and upon such publication, notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment,

decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members.

(5) Where the Securities and Exchange Board of India is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Securities and Exchange Board of India shall give a reasonable opportunity of being heard to all the persons concerned and the recognised stock exchange concerned before passing an order rejecting the scheme.

(6) The Securities and Exchange Board of India may, while approving the scheme under sub-section (2), by an order in writing, restrict—

(a) the voting rights of the shareholders who are also stock brokers of the recognised stock exchange;

(b) the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange;

(c) the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force, have full effect.

1 of 1956.

(8) Every recognised stock exchange, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2), shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Securities and Exchange Board of India, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Securities and Exchange Board of India may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.

Amendment of section 5.

4. Section 5 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) Where the recognised stock exchange has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 4B within the specified time therefor or the scheme has been rejected by the Securities and Exchange Board of India under sub-section (5) of section 4B, the recognition granted to such stock exchange under section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities and Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 4B."

5. After section 8 of the principal Act, the following section shall be inserted, namely:-

Insertion of new section 8A.

"8A. (1) A recognised stock exchange may, with the prior approval of the Securities and Exchange Board of India, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purpose of-

Clearing corporation.

(a) the periodical settlement of contracts and differences thereunder;

(b) the delivery of, and payment for, securities ;

(c) any other matter incidental to, or connected with, such transfer.

(2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Securities and Exchange Board of India for its approval.

(3) The Securities and Exchange Board of India may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1).

(4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised stock exchange."

6. After section 12 of the principal Act, the following section shall be inserted, namely:-

Insertion of new section 12A.

"12A. If, after making or causing to be made an inquiry, the Securities and Exchange Board of India is satisfied that it is necessary-

Power to issue directions.

(a) in the interest of investors, or orderly development of securities market; or

(b) to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or

(c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

it may issue such directions,-

(i) to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or

(ii) to any company whose securities are listed or proposed to be listed in a recognised stock exchange,

as may be appropriate in the interests of investors in securities and the securities market.”.

Amendment
section 13.

of 7. In section 13 of the principal Act,—

(a) for the words “between members of a recognised stock exchange”, the words “between members of a recognised stock exchange or recognised stock exchanges” shall be substituted;

(b) for the words “State or area” wherever they occur, the words “State or States or area” shall be substituted;

(c) the following proviso shall be inserted, namely:—

“Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.”.

Insertion of new
section 21A.

8. After section 21 of the principal Act, the following section shall be inserted, namely:—

Delisting of
securities.

“21A. (1) A recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals:

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.”.

Substitution of
new section for
section 22F.

9. For section 22F of the principal Act, the following section shall be substituted, namely:—

Appeal to Supreme
Court.

“22F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”.

10. In section 23 of the principal Act,--

Amendment of
section 23.

(a) in sub-section (1), after clause (i), for the words "shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine or with both", the words "shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both" shall be substituted;

(b) in sub-section (2),--

(i) for the word and figures "section 21," the words, figures and letter "section 21 or section 21A" shall be substituted.

(ii) for the words "shall, on conviction, be punishable with fine which may extend to one thousand rupees", the words "shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both" shall be substituted.

11. After section 23 of the principal Act, the following sections shall be inserted, namely:--

Insertion of new
sections 23A to
23-O.

"23A. Any person, who is required under this Act or any rules made thereunder,--

Penalty for failure
to furnish
information, return,
etc.

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

(b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

23B. If any person, who is required under this Act or any bye-laws of a recognised stock exchange made thereunder, to enter into an agreement with his client, fails to enter into such an agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure;

Penalty for failure
by any person to
enter into an
agreement with
clients.

23C. If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for failure
to redress
Investors'
grievances.

23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees.

Penalty for failure
to segregate
securities or
moneys of client or
clients.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

Penalty for excess dematerialisation or delivery of unlisted securities.

23F. If any person dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange, he shall be liable to a penalty not exceeding twenty-five crore rupees.

Penalty for failure to furnish periodical returns, etc.

23G. If a recognised stock exchange fails or neglects to furnish periodical returns to the Securities and Exchange Board of India or fails or neglects to make or amend its rules or bye-laws as directed by the Securities and Exchange Board of India or fails to comply with directions issued by the Securities and Exchange Board of India, such recognised stock exchange shall be liable to a penalty which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

Power to adjudicate.

23-I. (1) For the purpose of adjudicating under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, the Securities and Exchange Board of India shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

Factors to be taken into account by the adjudicating officer.

23J. While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Crediting sum realised by way of penalties to Consolidated Fund of India.

23K. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

23L. (1) Any person aggrieved, by the order or decision of the recognised stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under section 4B, may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.

Appeal to
Securities
Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

23M. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, for which no punishment is provided elsewhere in this Act, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

Offences.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

23N. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Composition of
certain offences.

23-O. (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Power to grant
immunity.

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that the recommendation of the Securities Exchange Board of India under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted."

Amendment of section 25.

12. In section 25 of the principal Act, the words, brackets and figure "sub-section (1) of" shall be omitted.

Substitution of new section for section 26.

13. For section 26 of the principal Act, the following section shall be substituted, namely:-

Cognizance of offences by courts.

"26. (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations or bye-laws made thereunder, save on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or a recognised stock exchange or by any person.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act."

Insertion of new section 27B.

14. After section 27A of the principal Act, the following section shall be inserted, namely:-

Right to receive income from mutual fund.

"27B. (1) It shall be lawful for the holder of any securities, being units or other instruments issued by any mutual fund, whose name appears on the books of the mutual fund issuing the said security to receive and retain any income in respect of units or other instruments issued by the mutual fund declared by the mutual fund in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the mutual fund, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the mutual fund from the transferor has lodged the security and all other documents relating to the transfer which may be required by the mutual fund with the mutual fund for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the mutual fund became due.

Explanation.—The period specified in this section shall be extended—

(i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by the mutual fund;

(ii) in case of loss of the transfer deed by theft or any other cause beyond the control of transferee, by the actual period taken for the replacement thereof; and

(iii) in case of delay in the lodging of any security, being units or other instruments issued by the mutual fund, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

(2) Nothing contained in sub-section (1) shall affect—

(a) the right of a mutual fund to pay any income from units or other instruments issued by the mutual fund which has become due to any person whose

name is for the time being registered in the books of the mutual fund as the holder of the security being units or other instruments issued by the mutual fund in respect of which the income in respect of units or other instruments issued by mutual fund has become due; or

(b) the right of transferee of any security, being units or other instruments issued by the mutual fund, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the mutual fund has refused to register the transfer of the security being units or other instruments issued by the mutual fund in the name of the transferee.”

15. In section 30 of the principal Act, in sub-section (2), for the existing clause (ha), the following clauses shall be substituted, namely:—

Amendment of section 30..

“(ha) the grounds on which the securities of a company may be delisted from any recognised stock exchange under sub-section (1) of section 21A;

(hb) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-section (2) of section 21A and the fees payable in respect of such appeal;

(hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;

(hd) the manner of inquiry under sub-section (1) of section 23-I;

(he) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23L and the fees payable in respect of such appeal;”

CHAPTER III

AMENDMENTS TO THE DEPOSITORIES ACT, 1996

16. After section 19 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), the following sections shall be inserted, namely:—

Insertion of new sections 19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, 19-I and 19J.

“19A. Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder,—

Penalty for failure to furnish information, return, etc.

(a) to furnish any information, document, books, returns or report to the Board, fails to furnish the same within the time specified therefor, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or the bye-laws, fails to file return or furnish the same within the time specified therefor, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19B. If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, and is required under this Act or any rules or

Penalty for failure to enter into an agreement.

regulations made thereunder, to enter into an agreement, fails to enter into such agreement, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure.

Penalty for failure to redress Investors' grievances.

19C. If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

15 of 1992.

Penalty for delay in dematerialisation or issue of certificate of securities.

19D. If any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors, within the time specified under this Act or regulations or bye-laws made thereunder or abets in delaying the process of dematerialisation or issue the certificate of securities on opting out of a depository of securities, such issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

15 of 1992.

Penalty for failure to reconcile records.

19E. If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to reconcile the records of dematerialised securities with all the securities issued by the issuer as specified in the regulations, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

15 of 1992.

Penalty for failure to comply with directions issued by Board under section 19.

19F. If any person fails to comply with the directions issued by the Board under section 19, within the time specified by it, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for contravention where no separate penalty has been provided.

19G. Whoever fails to comply with any provision of this Act, the rules or regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

Power to adjudicate.

19H. (1) For the purpose of adjudging under sections 19A, 19B, 19C, 19D, 19E, 19F and 19G, the Board shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

Factors to be taken into account by adjudicating officer.

19-I. While adjudging the quantum of penalty under section 19H, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

19J. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India."

Crediting sum realised by way of penalties to Consolidated Fund of India.

17. For section 20 of the principal Act, the following section shall be substituted, namely:-

Substitution of new section for section 20.

"20. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

Offences.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both."

18. For section 22 of the principal Act, the following sections shall be substituted, namely:-

Substitution of new sections for section 22.

"22. (1) No court shall take cognizance of any offence punishable under this Act or any rules or any regulations or bye-laws made thereunder, save on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or by any person.

Cognizance of offences by courts.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act.

22A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Composition of certain offences.

22B. (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Power to grant immunity.

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

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Provided further that recommendation of the Board under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted."

Amendment
section 23A.

of 19. In section 23A of the principal Act, in sub-section (1), after the words, brackets and figures "Save as provided in sub-section (2), any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the regulations made thereunder," and before the words "may prefer an appeal to a Securities Appellate Tribunal having a jurisdiction in the matter," the words "or by an order made by an adjudicating officer under this Act" shall be inserted. 32 of 1999.

Substitution of
new section for
section 23F.

20. For section 23F of the principal Act, the following shall be substituted, namely:-

Appeal to Supreme
Court.

"23F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

Amendment of
section 24.

21. In section 24 of the principal Act, in sub-section (2), for clause (a), the following clauses shall be substituted, namely:-

"(a) the manner of inquiry under sub-section (1) of section 19H;

(aa) the time within which an appeal may be preferred under sub-section (1) of section 23;"

Sd/-

A.P.J. ABDUL KALAM,
President.

Sd/-

T. K. VISWANATHAN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

S. S. PARMAR,
Secretary to Government.

Government Central Press, Gandhinagar.